

CANADA / JUDGMENT

Fleury v. Budd

2025 BCSC 2035

COURT

Supreme Court of British Columbia

DECIDED

17 October 2025

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2025 BCSC 2035 Fleury v. Budd

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Fleury v. Budd,

2025 BCSC 2035

Date: 20251017

Docket: E132640

Registry: Kelowna

Between:

Kaitlynn Vanessa Fleury

Claimant

And

Thomas Alan Budd

Respondent

Before: The Honourable Justice J. Hughes

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

September 12-15, 18-22, 25-29,

October 3-6, 10-13, 16-20,

November 6-7, 2023

February 20-23, 26-29,

March 1, 7, April 22,

May 21, 27-31, June 5-7,

September 9-13, 2024,

and May 27, 2025

Place and Date of Judgment:

Kelowna, B.C.

October 17, 2025

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Overview

- [1] This family law proceeding arises out of a relationship of relatively short duration between the claimant, Kaitlynn Fleury, and the respondent, Thomas Budd. Mr. Budd is a 67-year-old retired investment banker. He had a successful career in that industry, amassing assets worth over \$150 million as of trial. Ms. Fleury is a 38-year-old massage therapist who has also worked as a yoga teacher and trainer.
- [2] The parties' romantic relationship began in the fall of 2018. They were engaged in August 2020 but never married. The relationship ended on August 30, 2021. Broadly stated, the central issues in dispute are whether the parties were "spouses" as defined in the Family Law Act, S.B.C. 2011, c. 25 [FLA], and if so, the valuation and division of family property.

- [3] Ms. Fleury says that she and Mr. Budd lived in a marriage-like relationship for over two years--from October 2018 to August 2021--and were thus spouses under the FLA. Mr. Budd says that the parties were not in a marriage-like relationship because they did not meet the two-year cohabitation requirement and, in any event, Ms. Fleury did not love him and thus lacked the necessary subjective intention to be in a "marriage-like" relationship.
- [4] If the parties are found to be spouses, it is common ground that the only family property to be divided is the gain on Mr. Budd's excluded property under s. 84(2)(g) of the FLA. The parties disagree on how that gain is to be calculated.
- [5] Ms. Fleury seeks equal division of family property in accordance with s. 81 of the FLA. Mr. Budd seeks an unequal division in his favour on the basis that equal division would be significantly unfair given the value of his assets and relatively short duration of the relationship, among other factors.
- [6] In the course of closing submissions, the parties came to an agreement on spousal support and thus did not pursue that issue.
- [7] Ms. Fleury also alleges that Mr. Budd committed acts of family violence against her. She initially pleaded a tort claim based on family violence, but in light of *Ahluwalia v. Ahluwalia*, 2023 ONCA 476, leave to appeal to SCC granted, 41061 (16 May 2024), the causes of action advanced at trial were the underlying torts of assault (including sexual assault), battery, and intentional infliction of mental distress. Mr. Budd denies all allegations of tortious conduct.
- [8] For the reasons set out below, I find that the parties lived together in a marriage-like relationship from February 2019 to August 30, 2021, and were therefore spouses under the FLA. The family property consists of the gain on Mr. Budd's excluded property, having a value of \$13,263,000 as of trial. I also find that it would not be significantly unfair to divide the family property equally. Consequently, Ms. Fleury is entitled to \$5,145,892, net of adjustments and amounts already received. Ms. Fleury's tort claims are dismissed.

The parties' relationship

- [9] The parties called extensive evidence from 22 witnesses over the course of 55 days of trial spanning 12 months. They also delivered lengthy closing submissions approximating 400 pages and citing over 100 authorities. I have considered the evidence as a whole, but given the vast amount of evidence tendered, I will only recount those facts and events that I find are material to the determination of the issues before me.

Background

- [10] Mr. Budd resides primarily in Kelowna, where he owns multiple properties. His primary residential property consists of three lots on Fuller Road containing a tennis court and two residences: Mr. Budd's primary residence (the "Main House") and a second home (the "Tuscan House") (collectively the "Fuller Property").

- [11] The Tuscan House is used for guests and as an office for Mr. Budd's personal assistants. Mr. Budd also owns a vacation home in Manhattan Beach, California (the "California Property").
- [12] Mr. Budd has experienced significant challenges over the course of his adult life. He began using cocaine when he was 48 years old and developed a drug addiction that he has struggled with ever since. He has attended multiple in-patient treatment programs and participated in various outpatient programs and counselling but remains prone to relapses. Mr. Budd described these relapses as "runaways", which he testified can involve multiple days of staying in hotels and engaging in compulsive drug use and sexual activity.
- [13] Mr. Budd's struggles have been compounded by the difficult circumstances of his family life. Mr. Budd had two sons with his former wife. Tragically, each of them committed suicide when they were teenagers. The death of Mr. Budd's sons has been devastating for him. He continues to struggle with grief, post-traumatic stress disorder, and drug addiction as a result. Nonetheless, he has made significant efforts to champion mental health-related causes, by generously donating his time and making significant financial contributions to various charitable organizations and endeavours.
- [14] After the death of his younger son in 2015, Mr. Budd met Ms. Fleury for the first time when his friend, G.A., recommended Ms. Fleury for massage therapy. Ms. Fleury had many years of experience as a massage therapist and a yoga instructor.
- [15] Ms. Fleury began treating Mr. Budd, and by 2017, she was providing massage therapy treatments to him two to three times per week, usually for 90-minute sessions, at his home. By 2018, Mr. Budd was Ms. Fleury's most frequent client.
- [16] Mr. Budd and Ms. Fleury developed a close friendship while she was his massage therapist, though both were involved in other romantic relationships. When Mr. Budd's second son committed suicide in April 2017, Ms. Fleury was one of the first people that Mr. Budd reached out to for comfort and support.
- [17] From 2016 through 2018, Ms. Fleury was in a committed relationship with S.D. S.D. purchased a residential property in Kelowna (the "KLO Property"), that he and Ms. Fleury moved into in February 2017 and then renovated together. However, by the end of summer 2018, Ms. Fleury and S.D.'s relationship was troubled and was deteriorating. Mr. Budd was single at this point in time. Ms. Fleury was aware of this and told him about the issues in her relationship with S.D.

Beginning of the parties' romantic relationship

- [18] In early October 2018, Mr. Budd expressed to Ms. Fleury that he had loved her for some time and they discussed the prospect of exploring a romantic relationship. They had been friends for three years by this point and were excited about turning their friendship into "something more intimate and meaningful", as Mr. Budd later posted on social media. At this time, Mr. Budd also had the Fuller Property Main House and California Property stocked with the lifestyle and personal care products that Ms. Fleury preferred.
- [19] Mr. Budd expected that the significant age difference between him and Ms. Fleury would be an issue for her parents and wanted to reassure them of his honest intention to pursue a committed relationship with her. Accordingly, in late October 2018, he flew B.G., Ms. Fleury's mother, and her partner to California to spend a weekend with him and Ms. Fleury. Mr. Budd told B.G. and her partner about the various challenges he had experienced in life, including his struggles with addiction and relapses, but assured them that he would take care of Ms. Fleury.
- [20] Mr. Budd and Ms. Fleury spent a significant amount of time together in Kelowna, Vancouver, and California in November and December 2018. They travelled from Manhattan Beach to New York in early December, then to Red Deer to attend B.G.'s annual staff Christmas party, before returning to Kelowna. The parties celebrated Christmas together at the Fuller Property with their families, then returned to California from late December to early January 2019.
- [21] Ms. Fleury stopped working as a massage therapist shortly after the parties' relationship became romantic. Mr. Budd's lifestyle and the extensive travel they were doing together was not conducive to maintaining her client base. From the outset of the relationship, Mr. Budd provided Ms. Fleury with a monthly allowance and access to his credit cards. Ms. Fleury initially provided receipts to Mr. Budd's personal assistants so she could be reimbursed for additional things she purchased with her own money but stopped doing so by January 2019.

End of Ms. Fleury's relationship with S.D.

- [22] Ms. Fleury, B.G., and L.I. (Ms. Fleury's sister-in-law) all testified that Ms. Fleury ended her relationship with S.D. in September 2018. S.D. testified that he and Ms. Fleury continued to live together and be sexually intimate throughout the fall of 2018 and did not break up until December 2018. However, by November 2018, he was becoming concerned about Ms. Fleury's relationship with Mr. Budd and thought that they might have a "Tom problem".
- [23] Ms. Fleury did not tell S.D. that her relationship with Mr. Budd had become romantic. Instead, she took steps to conceal this fact, and the amount of time she was spending with Mr. Budd, from S.D. I accept S.D.'s evidence that Ms. Fleury continued to live with him at the KLO Property when she was in Kelowna throughout the fall of 2018.

- [24] I prefer S.D.'s evidence about the circumstances and timing of the end his relationship with Ms. Fleury to that of Ms. Fleury, B.G., and L.I. I find that S.D. and Ms. Fleury's relationship continued throughout the fall of 2018 and ended in December 2018, when S.D. learned that Ms. Fleury's relationship with Mr. Budd had become romantic, culminating in her decision to spend the Christmas holidays with Mr. Budd and his family in Kelowna, rather than with S.D. and his family in Whistler, as previously planned. This timing is consistent with both S.D. and Ms. Fleury changing their relationship status on their respective Facebook profiles in mid-December 2018.
- [25] Consequently, I find that despite Ms. Fleury becoming romantically involved with Mr. Budd as of mid-October 2018, her relationship with S.D. did not end until December 2018. She was therefore in relationships with both men from October to December 2018.
- [26] S.D. temporarily moved out of the KLO Property in January 2019 because Ms. Fleury refused to leave until the financial issues arising from their separation were resolved. Despite this, I find that Ms. Fleury spent little time at the KLO Property from January 2019 onwards.

January 2019 to March 2021

- [27] In January and February 2019, Mr. Budd and Ms. Fleury began attending public events together. They also travelled back and forth between Kelowna and California on multiple occasions, spending time with their families and friends. In March 2019, the parties travelled to Palm Springs with Mr. Budd's family (his father and sister and their respective partners), then attended a concert in Kelowna with Ms. Fleury's brother and sister-in-law.
- [28] By March 2019, Ms. Fleury and S.D. had resolved the issues arising from their separation. Mr. Budd was privy to the details of, and assisted Ms. Fleury in, her negotiations with S.D. Ms. Fleury received approximately \$200,000 from S.D. in settlement of, among other things, her claim to an interest in the KLO Property. Ms. Fleury used part of the settlement proceeds to purchase a BMW vehicle, which the parties subsequently took to California to use when they were at the California Property.
- [29] Also in late March 2019, Ms. Fleury signed a lease for a rental condo on Sunset Drive in Kelowna (the "Sunset Condo"), effective as of April 1, 2019. On March 28 and 29, 2019, Ms. Fleury moved the bulk of her possessions out of the KLO Property. Some of her possessions went to the Sunset Condo; the rest were stored in the garage of the Tuscan House at the Fuller Property. One of Mr. Budd's staff assisted with the move.
- [30] C.H. testified that after Ms. Fleury moved her things into the garage it was "full" with "quite a few items". Her evidence in this respect is consistent with photographs she took, which showed a significant number of moving boxes and other possessions in the Tuscan House garage. C.H. could not recall whether she took those photos in March or September 2019. I find they were taken in March 2019. C.H.'s evidence that she did not recall the garage being as full as is shown in the photos in March 2019 and that she did not look in the garage after March 2019 was unpersuasive and appeared to be an attempt to corroborate Mr. Budd's

position that Ms. Fleury did not move in until September 2019.

- [31] There is little in the evidence to suggest that Ms. Fleury ever lived, or spent any material amount of time, at the Sunset Condo. None of Ms. Fleury's family or friends testified to spending time there with her, and Mr. Budd also testified that he never went to the Sunset Condo. Further, as of August 1, 2019, the Sunset Condo was sublet to Ms. Fleury's friend, C.C., who then lived at the Sunset Condo from August 1, 2019, to January 31, 2020. C.C.'s uncontradicted evidence, which I accept, was that Ms. Fleury never stayed or lived with her at the Sunset Condo.
- [32] In the spring and summer of 2019, the parties continued to travel and socialize with family and friends and attended charitable events together as a couple. They spent Easter at the Fuller Property with both of their families, and Ms. Fleury's cousin visited them in May 2019. In June 2019, the parties travelled to Oakland, then attended B.G.'s surprise 60th birthday party in Alberta. They travelled back and forth between Kelowna and California in July, and in August 2019, went to New Brunswick--where Mr. Budd grew up--with his father and his father's girlfriend.
- [33] On September 10, 2019, Ms. Fleury hired First Choice Moving to move some patio furniture and other items that she had left at the KLO Property to the Fuller Property. A photo of the moving truck delivering the patio furniture to the Fuller Property was taken by C.H. and was used by Mr. Budd in a December 2019 Facebook post, purporting to announce that he and Ms. Fleury had just moved in together.
- [34] In mid-September 2019, the parties travelled to Europe for three weeks, and continued to spend time in both Kelowna and California. The parties spent Christmas 2019 at the Fuller Property with family. Mr. Budd finds the Christmas holidays an especially difficult time following the loss of his sons. This year was particularly hard for him. He left the family celebrations for a "runaway" and engaged in extensive drug use which resulted in him being admitted to the hospital and eventually discharged into Ms. Fleury's care.
- [35] In early 2020, the parties were discussing a formal cohabitation agreement. Both retained counsel and a first draft was provided to Ms. Fleury in February 2020. However, no agreement was reached at that time, and the draft agreement remained unsigned.
- [36] Following the onset of the COVID-19 pandemic in March 2020, the parties started experiencing conflict in their relationship. Over the course of the spring and summer of 2020, there were multiple instances in which Mr. Budd became angry and was verbally abusive towards Ms. Fleury. Ms. Fleury surreptitiously recorded some of these incidents, which I admitted into evidence with reasons indexed at *Fleury v. Budd*, 2023 BCSC 1749. Ms. Fleury says that she started recording Mr. Budd after he had her sign the two letters which misrepresented the circumstances of their relationship discussed above. The letters also denied how long they had been living together and the extent of her financial dependence on him.

- [37] The recordings were made at various points in time from April 2020 through September 2021. They contain statements relevant to the issues in this proceeding, including the cohabitation agreement, aspects of the parties' relationship, financial matters, arguments containing yelling and demeaning and insulting language, and the parties' drug use. Mr. Budd appears to have known, or at least suspected, that Ms. Fleury was recording him.
- [38] Despite episodes of conflict in their relationship, the parties discussed marriage, purchased a diamond in May 2020, and became engaged on August 11, 2020. Mr. Budd proposed to Ms. Fleury after a hike up to the top of Knox Mountain in Kelowna. The following day, they travelled to Vancouver to celebrate their engagement. They returned to Kelowna a few days later and announced their engagement to family and friends on August 18, 2020, at what became a joint celebration of their engagement and Mr. Budd's niece's birthday.
- [39] Later that same month, Mr. Budd's father passed away. This was an incredibly difficult time for Mr. Budd. It exacerbated his struggles with addiction and resulted in him relapsing. Ms. Fleury attempted to help Mr. Budd deal with his father's passing and assisted Mr. Budd's sister in organizing their father's celebration of life.
- [40] There were multiple episodes of conflict between the parties in September 2020, yet despite this, they travelled to California in October 2020 and stayed there until late April 2021. During that time, the parties continued to discuss the draft cohabitation agreement. On September 25, 2020, Ms. Fleury told Mr. Budd that her lawyer had advised her not to sign the draft agreement because it contained an inaccurate cohabitation date and an inaccurate figure of the monthly financial support Mr. Budd was providing her. In the ensuing discussion, which Ms. Fleury recorded, Mr. Budd admits that both the December 2019 cohabitation date and the dollar value of spousal support were indeed inaccurate.
- [41] In the early part of 2021, the parties made considerable efforts to avoid drug use. They consulted with a shaman and underwent treatment with ibogaine, a psychoactive drug. Other than one "runaway" episode, Mr. Budd remained largely drug-free.
- [42] Over the course of the spring, the parties continued to discuss their cohabitation agreement and, each with the assistance of counsel, exchanged further drafts.

The parties' escalating drug use and breakdown of the relationship

- [43] Mr. Budd has struggled with addiction for many years. Throughout the parties' relationship, he experienced what he termed "relapses", where he would engage in compulsive cocaine consumption over multiple days, either at home or at a hotel, and would sometimes engage in sexual activity with people other than Ms. Fleury.
- [44] Mr. Budd did not experience any "relapses" during the early days of the parties' relationship in 2018, and he estimated that such incidents only occurred four or five times in 2019. However, it is common ground that both Ms. Fleury and Mr. Budd's drug use worsened in 2020; Mr. Budd characterized his use as being twice as bad in 2020 as it was in 2019.

- [45] After the parties returned to Kelowna in May 2020, Ms. Fleury and began spending more time with S.W. and her boyfriend, A.D. A.D. testified that at the time, he was selling marijuana and cocaine and would also cook powdered cocaine into crack for friends and clients. The parties' increasing drug use coincided with them being introduced to crack cocaine by A.D. and was particularly heavy when they socialized with S.W. and A.D.
- [46] Mr. Budd was able to stay "clean" for periods of time in early 2021, particularly when the parties were in California. However, when they returned to Kelowna in April 2021, Ms. Fleury continued socializing with S.W. and within a short period of time, both Ms. Fleury and Mr. Budd resumed heavy use of crack cocaine, with each other and with their friends and neighbours.
- [47] On July 21 and 22, 2021, the parties celebrated Ms. Fleury's birthday with a multi-day party at the Fuller Property. S.W. and A.D. attended, and they consumed significant amounts of crack cocaine and other substances. The party ended when Ms. Fleury became ill with a suspected overdose and was taken to the hospital by Mr. Budd.
- [48] S.W., A.D., Ms. Fleury, and Mr. Budd all had different recollections of what transpired that night. The reliability of all of their evidence is questionable given the extensive drug use they were engaged in at the time. This is particularly the case for S.W. I find her recollection of Mr. Budd's conduct and demeanour was exaggerated, likely in attempt to portray him in a negative light. I also reject the inference alluded to by both S.W. and Ms. Fleury that Mr. Budd somehow induced Ms. Fleury's overdose by giving her a specific batch of drugs from a particular container that no one else was allowed to consume.
- [49] Ms. Fleury was admitted to the hospital at approximately 4:30 a.m. on the morning of July 22, 2021. She was discharged that same day. The next day, the parties flew down to Vancouver on Mr. Budd's plane to continue Ms. Fleury's birthday celebrations as previously planned. The parties stayed at a hotel in Vancouver and their drug use continued. This was a volatile few days in their relationship.
- [50] One conflict involved Ms. Fleury's attempted purchase of a luxury SUV that Mr. Budd had promised to buy her as a wedding gift. Mr. Budd was not amenable to shopping for a vehicle at that time, but Ms. Fleury nonetheless went and saw the vehicle and paid a \$5,000 deposit. Mr. Budd became angry when he found the deposit receipt in their hotel room later that evening. Ms. Fleury recorded portions of a series of instances where Mr. Budd can be heard encouraging her to consume more drugs and to have sex with other men, yelling and swearing at her, repeatedly calling her a "fucking cunt", and threatening to take away her credit cards.
- [51] In early August 2021, Ms. Fleury went to Osoyoos to attend a car racing course. S.W. came with her. By this point in time, both women were heavily addicted to cocaine and were using daily. They ran out of drugs the first night they were in Osoyoos and asked A.D. to bring them more, which he did.

- [52] Ms. Fleury did not attend the racing course as planned. The weekend ended early because of an altercation between S.W. and A.D., which resulted in the police being called and S.W. and Ms. Fleury driving back to Kelowna in the middle of the night. S.W., Ms. Fleury, and A.D. had very different accounts of what transpired over the course of the weekend, particularly regarding the nature and extent of certain alleged altercations between S.W. and A.D. It is unnecessary for me to resolve those discrepancies or make factual findings about whether A.D. assaulted S.W. to determine the issues in this action.
- [53] After the women left the hotel, A.D. called them and threatened to show Mr. Budd images of Ms. Fleury and S.W. engaged in sex acts together, and audio recordings of Ms. Fleury speaking negatively about Mr. Budd that he claimed to have in his possession. Ms. Fleury called Mr. Budd and told him that A.D. was attempting to blackmail her. Mr. Budd in turn contacted A.D., following which A.D. testified that he decided to leave matters alone and did not send any photographs or videos to Mr. Budd. However, A.D. later admitted that he did not actually have any images because they were on a different phone that he lost.
- [54] A.D. also testified that he had a recording of Ms. Fleury saying things about her relationship with Mr. Budd. No such recording was adduced into evidence. A.D. said that this was because S.W. and Ms. Fleury "threatened his life" so he gave them his phone, and they deleted the voice notes. I do not find A.D.'s evidence on this point particularly credible. His assertion that he allowed Ms. Fleury and S.W. to delete the alleged recordings because he feared for his life is difficult to reconcile with the preponderance of probabilities in the circumstances.
- [55] Irrespective of whether the audio recordings existed, I give no weight to A.D.'s evidence about their contents. In addition to my concerns about his credibility, his evidence as to what Ms. Fleury is alleged to have said in the recordings constitutes double hearsay and his recollection of what she said was, on his own admission, "fuzzy" at best. A.D. did not pay much attention to what Ms. Fleury was saying on the recordings because he was more interested in trying to find out if S.W. was cheating on him. Finally, by August 2021, both S.W. and Ms. Fleury were heavily addicted to cocaine and were using daily, which also detracts from the reliability and corresponding weight that could be given to the statements they allegedly made in the recordings.
- [56] Over the balance of the summer, the parties attempted to stop their drug use, but those efforts were short-lived and largely unsuccessful. Ms. Fleury also continued to spend significant sums of money over Mr. Budd's objections, up to \$25,000 per month.
- [57] By mid-August 2021, Ms. Fleury told Mr. Budd that she was not spending time with S.W. anymore and wanted to attend a rehabilitation program. Mr. Budd wanted her to be "clean" for 30 days before he would support and fund her attendance, and also wanted to know whether she was being truthful about not spending time with S.W. He hired a private investigator to follow Ms. Fleury.

- [58] In late August, Ms. Fleury left the Fuller Property and spent a few nights at a hotel in Kelowna with S.W. because she wanted some time away from Mr. Budd to reflect on their relationship. Mr. Budd texted and called Ms. Fleury repeatedly during this time, telling her he loved her, he missed her, he wanted to hold her, and he was thinking about planning their wedding. Mr. Budd also gave Ms. Fleury another copy of the draft cohabitation agreement and repeatedly asked her if she had signed it.
- [59] Ms. Fleury returned to the Fuller Property on August 28, 2021. She testified that Mr. Budd apologized to her, gave her flowers and a card, and again asked her to sign the draft cohabitation agreement. Mr. Budd admits that he purchased flowers and a card for Ms. Fleury in recognition of the anniversary of their engagement, but said that by the time Ms. Fleury returned home, they had no meaning to him, so he did not give them to her and instead put them in a corner of the sunroom.
- [60] I prefer Ms. Fleury's evidence on this point and find that Mr. Budd gave Ms. Fleury the flowers and card and asked her to sign the cohabitation agreement. I find that Mr. Budd did so because he knew the draft cohabitation agreement remained unsigned and wanted Ms. Fleury to sign it before he ended the relationship. This is consistent with Mr. Budd's conduct over the preceding days where he admits to asking Ms. Fleury whether she had taken the agreement to her lawyer and signed it. Notably, the draft agreement included a cohabitation start date of September 1, 2019, which meant that the two-year threshold was fast approaching. Mr. Budd was well-familiar with the implications of that threshold being crossed in terms of his potential obligations to Ms. Fleury. As he testified, he had previously ended relationships short of two-years to avoid such obligations.
- [61] I have no hesitation in concluding that the fact that the draft cohabitation agreement remained unsigned was the primary factor in Mr. Budd's decision to end the relationship and his haste in having Ms. Fleury removed from the Fuller Property on August 30, 2021. The contents of the private investigator's report and his alleged discovery of dishonesty by Ms. Fleury may have been contributing factors, but by that point in time, Mr. Budd had decided that he would end the relationship if Ms. Fleury did not sign the cohabitation agreement. Indeed, he had already transferred \$48,000--the amount that would have been owing to Ms. Fleury on termination of the relationship if the cohabitation agreement had been signed--to his counsel a week prior.
- [62] Late in the afternoon on August 30, 2021, Ms. Fleury was home alone in the Main House at the Fuller Property when Mr. Budd arrived with security guards, his assistance, and a friend. Mr. Budd read a prepared statement to Ms. Fleury, evicting her from the Fuller Property. Mr. Budd's second assistant recorded what was transpiring. Ms. Fleury called S.W., who in turn called the police. The police and Ms. Fleury's father and brother eventually attended at the Fuller Property and assisted Ms. Fleury in packing up her things and vacating the property.

Post-Relationship Events

- [63] Ms. Fleury alleges that Mr. Budd stalked her after he ended the relationship. I reject her evidence on this point and make no such finding. I accept Mr. Budd's evidence that he learned that Ms. Fleury was living at S.W.'s mother's house while taking steps to investigate certain PayPal charges that were billed to his credit card with that address as the delivery address. Mr. Budd subsequently attended at S.W.'s mother's house to re-take possession of his Porsche SUV that Ms. Fleury had taken with her when she left the Fuller Property. I accept that he did so because it was registered and insured in his name and he was concerned about potential liability issues arising as a result.
- [64] Ms. Fleury struggled to support herself and her continuing drug addiction. She received \$48,000 from Mr. Budd, through counsel. She also sold her engagement ring to a local pawn shop for \$20,000; its original purchase price was over \$60,000.
- [65] On October 2, 2021, Ms. Fleury started a month-long in-patient addictions and mental health treatment program. Upon being discharged, she spent time at her father's home in Osoyoos and at a rental accommodation in Kelowna before relocating to Calgary in December 2021. Ms. Fleury was not working at this time and relied on financial assistance from her father. She stayed in Calgary until December 2022, when she moved to Red Deer to live with B.G.
- [66] In May 2023, Ms. Fleury started working part-time at a health and wellness clinic in Red Deer, earning approximately \$95 per hour. Ms. Fleury intends to return to work as a registered massage therapist in Alberta, and in furtherance of this, obtained her RMT certification in May 2023.

Credibility

- [67] Given the nature of the matters in issue and the parties' differing versions of key events, the credibility and reliability of their evidence plays a central role in this case.
- [68] The well-known principles applicable to assessing credibility are set out in *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354, 1951 CanLII 252 (B.C.C.A.) at 357, and *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186. The overarching question involves determining which version of events is the most consistent with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions: *Youyi Group Holdings (Canada) Ltd. v Brentwood Lanes Canada Ltd.*, 2019 BCSC 739 at para. 91, *aff'd* 2020 BCCA 130, leave to appeal to SCC ref'd, 39246 (21 January 2021). Ultimately, the validity of the evidence depends on whether it is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time.
- [69] I have considered the credibility and reliability of the parties and of the other witnesses who testified with these guiding principles in mind.

[70] That said, credibility is not an "all or nothing" proposition. I may believe all, part, or none of the parties' evidence, and can attach different weight to different parts of that evidence: *Radacina v. Aquino*, 2020 BCSC 1143 at para. 96, citing *R. v. R. (D.)*, [1996] 2 S.C.R. 291, 1996 CanLII 207 at para. 93. This is particularly germane in the present case. I have concerns about aspects of each of the parties' evidence, but accept it in other instances, where it accords with the documentary evidence or that of other non-party witnesses whose evidence I accept, or where it is otherwise consistent with the preponderance of the probabilities that a practical and informed person would accept as reasonable in the circumstances.

Assessment of Ms. Fleury's evidence

[71] Throughout her evidence, Ms. Fleury demonstrated a pattern of being less than forthright, and was at times deliberately misleading when it was to her advantage. For example, Ms. Fleury often had a detailed recollection of events which supported her position in the litigation, but had difficulty recalling matters which were at odds with her position.

[72] Ms. Fleury's evidence suffered from internal inconsistencies and, in some instances, her inability to recall matters appeared to be aimed at avoiding further contradictions in her evidence. Ms. Fleury's evidence was also inconsistent with that of third-party witnesses whose evidence on the relevant points I accept in preference to hers. For example:

- a) She testified that she invested \$200,000 into renovating S.D.'s KLO Property, but her supporting documentary evidence did not substantiate anywhere near that level of investment;
- b) She concealed her romantic relationship with Mr. Budd from S.D. in the fall of 2018 and attempted to perpetuate that dishonesty in her evidence at trial by testifying that she and S.D. broke up in September 2018, which was contradicted by S.D.'s testimony and that of other witnesses;
- c) Her explanation for why she did not repay funds she borrowed for an investment in Green Tire Technologies Ltd. ("GTT") was nonsensical, inconsistent with her own documents. It was also contradicted by K.M.'s evidence, which I prefer to Ms. Fleury's on this point;
- d) Her evidence about the phone calls she made on November 28, 2020--namely, that she could not remember who she called--was not credible and was inconsistent with B.G.'s evidence; and
- e) She denied purchasing drugs on the evening of June 25, 2021, and said that her brother provided them; however, her brother testified that he did not do so and a neighbour testified that Ms. Fleury told him she was having cocaine delivered and that he observed her collecting the drugs in the Fuller Property driveway on the evening in question.

- [73] Ms. Fleury's credibility is also negatively impacted by her admitted failure to file and pay income taxes over a period of many years: see e.g. *Bradley v. Callahan*, 2024 BCSC 163 at para. 92, aff'd 2025 BCCA 271; *Poon v. Yuen*, 2021 BCSC 1809 at para. 13, aff'd 2024 BCCA 374. I reject Ms. Fleury's assertion that Mr. Budd is to blame for this because he did not return her source documents after the relationship ended. Ms. Fleury did not file her taxes for many years prior to her relationship with Mr. Budd, so whether he returned her source documents post-August 2021 or not is largely immaterial. Mr. Budd and S.D. both offered to assist Ms. Fleury in getting her tax filings up to date during their respective relationships, yet she chose not to do so.
- [74] In light of the above, I find that I must treat Ms. Fleury's evidence with significant caution, other than where it is consistent with the preponderance of the evidence or corroborated by other independent or objective evidence, including the testimony of witnesses whose evidence I accept.

Assessment of Mr. Budd's evidence

- [75] I also have concerns with Mr. Budd's credibility. His testimony was often rambling and he was frequently argumentative and confrontational in cross-examination, to the point where intervention from the Court was required. At times, Mr. Budd's evidence appeared disassociated from the reality of the parties' circumstances to the point of being absurd. It also suffered from internal and external inconsistencies on material points. For example:
- a) He denied that Ms. Fleury was financially dependent on him despite the overwhelming weight of the documentary and other evidence to the contrary;
 - b) He denied knowing where Ms. Fleury was living from March to September 2019, despite the fact that they spent the majority of their time together from January 2019 onwards;
 - c) He denied using crystal meth, then later admitted to using it on occasion;
 - d) Despite admitting that he suffered from anger issues and audio recordings demonstrating the derogative and demeaning language he used towards Ms. Fleury when he was angry with her, he categorically denied responsibility for any form of abuse; and
 - e) When confronted with an audio recording in which he offered to pay Ms. Fleury to engage in sex acts with other men, he gave the unbelievable explanation that the things he said were dictated to him by Ms. Fleury and that he was reading from a document she gave him.
- [76] Mr. Budd's credibility is also undermined by his demonstrated willingness to create false or misleading narratives regarding the circumstances of his relationship with Ms. Fleury. Mr. Budd went to significant effort to misrepresent when Ms. Fleury started living with him at the Fuller Property by creating misleading posts on his Facebook page. These posts suggested that Ms. Fleury did not move into the Fuller Property until December 2019 when, by his own admission, she had been living there since September 2019 at the latest.

[77] The parties also drafted and signed two "cohabitation letters" in March and November 2019 that contained misleading statements about their relationship and Ms. Fleury's financial and living circumstances. The circumstances surrounding the creation of these two letters are one instance where I prefer Ms. Fleury's evidence to Mr. Budd's. I find that these letters were Mr. Budd's idea, that they were written at his request, and that he dictated their contents. The one-sided nature of their contents suggests that the letters were made for his benefit, not Ms. Fleury's, likely with a view to creating evidence he could use at a later date to counter allegations that they were living in a marriage-like relationship.

[78] The first letter is dated June 15, 2019, but the parties agree that it was written at the end of March 2019. It was handwritten by Ms. Fleury and signed by both parties. It states:

I, Kaitlynn Fleury write this statement of facts of my own free will.

I suggested to Thomas Budd more than two months ago we should sign a letter so that it is clear that I don't live with him and that I am independent financially and won't be seeking future support of any kind, nor any compensation as a result of being his girlfriend.

My current address is #903, 1151 Sunset Drive, Kelowna, BC. I moved there on April 1, 2019 after leaving my former residence at 732 KLO Rd, Kelowna, BC, where I co-habitated for 2 years.

I left the above relationship receiving no support payment or compensation except a return of capital investment in the house amounting to \$200,000.00.

I also had net investments of \$50,000 and a car valued at \$30,000.00.

I consider myself financially independent and do not need support from anyone including Thomas Budd.

My employment has come from three sources; massage therapy, yoga teaching and yoga teacher training.

Due to health issues and discussions with other people in the massage and chiropractic businesses, I have been phasing out of this type of work and this was contemplated before starting a relationship with Thomas Budd.

I teach yoga but I do not enjoy it as much as I do the yoga teacher training and I will probably phase out of the yoga classes and focus on yoga teacher training.

I have signed a one-year lease at my current address and I have no set plans to change that or move in with Tom.

I am not dependent on Tom in any manner especially in financial terms.

The changes I have made to my career were my choices and initiated by myself.

Any funds or items given to me by Tom are gifts or repayment of items I purchased for Tom and are later re-embursed [sic].

[79] The overall impression given by this letter, and many of the individual facts set out therein, misrepresents the circumstances of the parties' relationship and Ms. Fleury's financial circumstances. Ms. Fleury was not financially independent as she was only doing yoga teacher training a few weekends a year at her mother's gym. The preponderance of the evidence shows that by the spring of 2019, Ms. Fleury was financially dependent on Mr. Budd. As I discuss further below, she was also not living at the Sunset Condo at the relevant time.

[80] The second letter is dated October 30, 2019, but the parties agree that it was made on November 19, 2019. It continues in the same vein as the June 2019 letter in that it attempts to downplay the nature of the parties' relationship and Ms. Fleury's financial dependence on Mr. Budd:

Thomas Budd and I, Kaitlynn Fleury, started dating on November 15, 2018 and the amount of time we spend together has increased steadily since then. We have not lived together and I do not consider that we have acted as a married couple. I have my own apartment at #903, 1151 Sunset Drive, Kelowna. We have discussed moving in together and are looking at the middle of December, 2019 as our goal. I am independent financially and do not rely on Mr. Budd for financial support. I am currently getting income from Yoga Teacher Training through Oranj Fitness and am searching for other career opportunities. I am doing some interim work for Tom Budd with Focus Advisory until I choose my next step in career. I retired from massage just before Tom and I started dating for health reasons, the decision had nothing to do with my relationship. Although Tom and I will be living together, if the relationship ends before two years of the move in date I will not be looking for any financial compensation or support or any gain in Tom's assets. I understand with marriage there will be a pre-nuptial agreement signed that will protect Tom's current assets.

[81] To an even greater extent than the June 2019 document, many of the statements contained in the October 2019 document were false at the time it was created. First, it is undisputed that the parties started dating in October 2018, not November. Second, the statement that the parties had not lived together is also false. Mr. Budd admits that Ms. Fleury was living with him at the Fuller Property as of September 2019. Consequently, the statement that Ms. Fleury had her own apartment--the Sunset Condo--was at best misleading and more likely intentionally false, particularly since as of August 1, 2019, the apartment was sublet to her friend, C.C. The statement that Ms. Fleury was financially independent and did not rely on Mr. Budd for financial support was also false as by this point in time, she had not worked as a massage therapist for almost a year and relied entirely on Mr. Budd to support her and their lifestyle. The assertion that Ms. Fleury "retired" from massage "just before" she and Mr. Budd started dating for "health reasons" is also unsupported on the evidence.

[82] The existence of these two documents, their false and misleading content, and the role I find Mr. Budd played in their creation illustrate the lengths to which he was prepared to go in creating documentation with a view to substantiating a misleading narrative about when he and Ms. Fleury started living together and the nature of their relationship. This significantly

and negatively impacts his credibility and causes me to treat his viva voce evidence and any documentary evidence created by him with caution, particularly that pertaining to the nature and duration of the parties' relationship.

- [83] Finally, Mr. Budd submitted in closing argument that his version of events ought to be believed because of the number of "independent" witnesses who testified on his behalf. This submission is consistent with his overall approach to the litigation, which involved calling numerous witnesses whose evidence was aimed primarily at attacking Ms. Fleury's character and credibility, largely on collateral issues, and buttressing his own credibility. Credibility is not a "numbers game"; the fact that more witnesses say one thing is not determinative: *Gill v. Gill*, 2024 BCSC 346 at para. 135.

Collateral witnesses

- [84] The parties each called numerous collateral witnesses. I address some of the issues that arise in respect of certain witnesses' evidence throughout these reasons. However, commentary on the credibility of other witnesses is required.
- [85] First, I have concerns about the credibility of some of Ms. Fleury's family members. Ms. Fleury's father, M.F.'s, evidence at trial was materially inconsistent with an affidavit he made earlier in this proceeding. At trial, he testified that Mr. Budd asked him for Ms. Fleury's hand in marriage at Easter 2019, but in an earlier affidavit, he said that this occurred in July 2019. M.F. also had difficulty recalling matters that ought to have been memorable to him. For example, he initially testified that the last time he stayed at the Fuller Property was sometime in 2019, but then admitted in cross-examination that he stayed there in April 2020. The April 2020 stay ought to have been memorable for him because while he was there, the police attended at the property to execute a duty to warn arising from threats to his life. M.F. also testified that he did not recall having guns at the Tuscan House in April 2020, but both Ms. Fleury and Mr. Budd testified to seeing guns in the Tuscan House at the time.
- [86] Ms. Fleury's mother, B.G.'s, evidence is concerning because it was replete with unexplained inconsistencies and exhibited clear bias in favour of Ms. Fleury. B.G. appeared more concerned with corroborating Ms. Fleury's position than providing an accurate recounting of events as they in fact occurred.
- [87] L.I. is Ms. Fleury's brother, A.F.'s, wife. Her evidence that B.G. travelled to Kelowna in October 2018 to console Ms. Fleury after her breakup from S.D. was inconsistent with that of Ms. Fleury and B.G. Her assertions that there were no guns in the Tuscan House in April 2020, and that she had no idea why the police would execute a duty to warn on them, were particularly implausible. This is especially true given that immediately after the duty to warn was executed, she and her husband returned to Alberta, having stayed at the Tuscan House for only a day.

- [88] Credibility concerns also arise in respect of some of Mr. Budd's witnesses. R.K. is one of the men who engaged in group sexual activities with the parties. Mr. Budd alleges that R.K. and Ms. Fleury engaged in a "secret affair" behind his back. R.K. confirmed this, testifying that he and Ms. Fleury's affair started in the summer of 2020 and carried on through the summer of 2021.
- [89] I do not find R.K. to be a credible witness and reject his evidence about the secret affair as exaggerated and untrue. R.K.'s own evidence on this point was irreconcilable. In an affidavit made in December 2022, he said that his sexual relationship with Ms. Fleury ended near the end of August 2020. However, at trial, he changed his evidence to assert for the first time that he and Ms. Fleury were sexually intimate at least two times in the spring of 2021. I do not find R.K.'s attempts to explain this significant omission from his affidavit and his subsequent change in evidence at trial persuasive. Moreover, given the extensive security system and cameras in place at the Fuller Property, I find it highly likely that, had R.K. and Ms. Fleury been engaging in a secret affair of the nature and extent described by R.K., they would have been caught on the security camera footage. In addition, none of the many guests who visited or stayed at the Tuscan House in the summer of 2020, when the alleged affair was purportedly occurring, testified to seeing R.K. there.
- [90] C.H. is Mr. Budd's longtime assistant and remains employed by him. She largely had a good recollection of events and was the person primarily responsible for managing Mr. Budd's financial affairs. I accept her evidence as to his finances and related matters. However, I have treated C.H.'s evidence regarding the timing and nature of the parties' relationship with caution because she assisted Mr. Budd in his efforts to create a misleading narrative as to when Ms. Fleury began living at the Fuller Property. C.H.'s dislike of Ms. Fleury and her resulting willingness to shape her evidence in favour of her long-time employer was apparent throughout her testimony and ultimately caused inconsistencies that undermine her credibility. By way of but one example, her evidence that the parties did not start dating until the spring of 2019 is inconsistent with the parties' uncontested evidence that they started dating in October 2018. It is also inconsistent with C.H.'s own evidence that Mr. Budd was "smitten" with Ms. Fleury in the summer of 2018, that he told C.H. he was going to ask Ms. Fleury out in the fall of 2018, and C.H.'s firsthand knowledge that Ms. Fleury started staying over at the Fuller Property in the fall of 2018.
- [91] On the other hand, and as I address in further detail below, I found S.D. to be a forthright witness whose evidence was both credible and reliable. Where his testimony conflicts with Ms. Fleury's, I prefer his evidence. S.D. had a good recollection of events, and his evidence was largely consistent with that of other third-party witnesses and the available documentary evidence. S.D.'s evidence was not meaningfully challenged on cross-examination. I do not accept Ms. Fleury's contention that I should give little weight to S.D.'s evidence because he has subsequently become friendly with Mr. Budd and went to two basketball games in California at Mr. Budd's expense. S.D. swore two affidavits in this proceeding prior to travelling with Mr. Budd and the evidence he gave at trial thereafter was

consistent with his earlier evidence.

Credibility conclusions

[92] In the circumstances, I am left in the position where I am unable to generally prefer either party's evidence over the other. Both Ms. Fleury and Mr. Budd demonstrated a willingness to mislead when it suited their purposes and had difficulty resisting the influence of self-interest in modifying their recollections of key events in their relationship.

[93] My concerns about the parties' credibility, as well as that of some of the lay witnesses, make it unusually challenging to make findings of fact in this case. In the circumstances, I find Madam Justice Southin's caution in *Le v. Milburn*, [1987] B.C.J. No. 2690 (S.C.), 1987 CarswellBC 2936 at para. 1 particularly apposite:

When a litigant practises to deceive, whether by deliberate falsehood or gross exaggeration, the court has much difficulty in disentangling the truth from the web of deceit and exaggeration. If, in the course of the disentangling of the web, the court casts aside as untrue something that was indeed true, the litigant has only himself or herself to blame. ...

[94] While I have attempted to anchor my findings in the documentary evidence, this is not always possible as some documents created during the relationship have been proven unreliable and, in some instances, demonstrably false. I have attempted to harmonize my factual findings with the objective evidence and preponderance of probabilities, but in some instances, there is simply no objective evidence to which the parties' testimony can be tethered. I have therefore relied on the combined effect of the undisputed facts, the absence of contradictory evidence, independent evidence where available, common sense, and my assessment of the probabilities affecting the case as a whole to make the factual findings necessary to determine the issues raised in this case.

Reasons for ruling on Voir Dire #2: Collateral issues and similar fact evidence

[95] Mid-trial, Ms. Fleury applied to have the evidence of four of Mr. Budd's witnesses ruled inadmissible on the basis that their evidence constituted inappropriate collateral fact evidence that was not admissible as similar fact evidence.

[96] The evidence in issue can be generally characterized as pertaining to Ms. Fleury's past relationships and interactions with men other than Mr. Budd, which is adduced for the purpose of establishing that Ms. Fleury is a person of bad character who has a history of taking financial advantage of men. Importantly in this respect, Mr. Budd's counterclaim does not plead allegations of fraud or misrepresentation.

[97] Ms. Fleury also sought to preclude two other witnesses, C.M. and A.M., from testifying. Neither of these witnesses were listed on Mr. Budd's witness list and accordingly, leave was required for them to testify. In a mid-trial ruling made February 29, 2024, I dismissed Mr. Budd's application for leave to call C.M. and A.M. as I was not persuaded that, considering the factors set out in *Fu v. Zhu*, 2017 BCSC 749, it was in the interests of justice to permit them to testify: *Fleury v. Budd* (February 29, 2024), Kelowna E132640 (B.C.S.C.).

Legal Principles

[98] Most of the evidence in issue on this voir dire is aptly characterized as similar fact evidence going to collateral issues, which Mr. Budd seeks to tender to establish that Ms. Fleury is a person of bad character.

[99] To be admissible, evidence must have relevance beyond general credibility; it must be relevant to a substantive or material issue in the case: In *Dahl v. South Coast British Columbia Transportation Authority*, 2018 BCCA 184, at para. 15. In *Dahl*, the Court of Appeal found that it was an error to admit evidence regarding collateral facts for the sole purpose of impugning credibility: at para. 16.

[100] The collateral facts rule is an established exclusionary rule that prohibits calling evidence solely to contradict a witness on a collateral fact: *R. v. Samaniego*, 2022 SCC 9 at para. 134 (in dissent, though not on this point). It is designed to promote judicial efficiency and thus prevents parties from bringing extrinsic evidence to contradict a witness on a collateral fact. In *Dahl* at para. 14, the Court of Appeal adopted the summary of the rule set out in *Sopinka, Lederman & Bryant, The Law of Evidence in Canada*, 4th ed.:

§16.223 There is a general rule that answers given by a witness to questions put to him or her on cross-examination concerning collateral facts are treated as final, and cannot be contradicted by extrinsic evidence. Without such a rule, there is the danger that litigation will be otherwise prolonged and become sidetracked and involved in numerous subsidiary issues. The rule does permit the use of extrinsic evidence to contradict a witness who has made a statement in cross-examination which is relevant to the substantive issue. However, with respect to questions which are directed solely to impeaching a witness' credibility, the answers must, save for certain common law and exceptions, be accepted as final. McIntyre J., in *Krause v. R.*, described collateral matters as being "not determinative of an issue arising in the pleadings or indictment or not relevant to matters which must be proved for the determination of the case". Difficulties have arisen, however, because of uncertainty as to whether a question merely goes to a collateral issue or whether it goes to a substantive one. Pollock C.B. attempted to articulate the distinction in *Attorney General v. Hitchcock*, as follows:

... the test, whether the matter is collateral or not, is this: if the answer of a witness is a matter which you would be allowed on your part to prove in evidence - if it have such a connection with the issue, that you would be allowed to give it in evidence - then it is a matter on which you may contradict him.

[Emphasis added, citations omitted]

- [101] However, the collateral facts rule is not an absolute exclusion. Where the benefits of the collateral facts outweigh the negative impact on the trial process, parties should be allowed to pursue the issue: *Samaniego* at para. 134.
- [102] Similar fact evidence is evidence that involves inferences about the conduct of a party based on their conduct on other occasions: *Rezai v. Uddin*, 2017 BCSC 1746 at para. 19, citing *R. v. Handy*, 2002 SCC 56. Although *Handy* was decided in the criminal context, its guidance is equally applied in the civil context: see e.g. *Randhawa v. 420413 B.C. Ltd.*, 2009 BCCA 602 at paras. 49-63; *K.S.P. v. B.R.J.*, 2023 BCSC 886 [K.S.P.] at paras. 114-116.
- [103] Similar fact evidence is subject to the general exclusionary rule for bad character evidence as set out in *Handy*:
- [31] The respondent is clearly correct in saying that evidence of misconduct beyond what is alleged in the indictment which does no more than blacken his character is inadmissible. Nobody is charged with having a "general" disposition or propensity for theft or violence or whatever. The exclusion thus generally prohibits character evidence to be used as circumstantial proof of conduct, i.e., to allow an inference from the "similar facts" that the accused has the propensity or disposition to do the type of acts charged and is therefore guilty of the offence.
- [104] While presumptively inadmissible, courts have recognized that in some cases, evidence of previous discreditable conduct may be so highly relevant that its probative value outweighs any potential prejudicial effects: *Handy* at para. 41. As a result, an exception exists permitting similar fact evidence to be received where the party adducing the evidence can show on the balance of probabilities that the probative value of the evidence outweighs its prejudicial effects: *R. v. R.K.K.*, 2022 BCCA 17 at para. 61, citing *Handy* at paras. 41 and 55. Admission of such evidence is exceptional, and requires a high degree of probative value: *K.S.P.* at para. 116.
- [105] Whether the probative value of the evidence outweighs its prejudicial effect can only be determined in light of the purpose for which is proffered: *Handy* at para. 69. The party adducing the evidence must identify the material issue in question, as the utility of the evidence lies in its ability to advance or refute a live issue before the court: *Handy* at para. 73.
- [106] The primary consideration for the probative value of evidence is its connectedness to the issue in question: *R.K.K.* at para. 62. General disposition is not a valid issue in question; the evidence must go beyond showing general propensity: *Handy* at paras. 71-72. If an issue is not in dispute, then the evidence is irrelevant and must be excluded: *Handy* at para. 74. The more focussed and specific the evidence to the issue at hand, the greater its probative value: *R.K.K.* at para. 62.

Analysis

[107] Mr. Budd asserted that the evidence he sought to adduce was relevant to establishing that Ms. Fleury was a person of bad character: that she was not credible and had a history of manipulating men for personal financial gain. Mr. Budd also said that the witnesses in issue would give evidence of Ms. Fleury's willing engagement in sex acts with third parties and drug use prior to the relationship.

[108] In my view, the evidence that Mr. Budd sought to tender from G.L., S.D., S.C., and G.A. was for the purpose of impugning Ms. Fleury's credibility, both generally and in respect of collateral issues. The general tenor of the evidence was to establish that Ms. Fleury was a person of bad character who has had a history of stealing from or taking financial advantage of people based on alleged incidents which predate her relationship with Mr. Budd. Mr. Budd said that Ms. Fleury deceived him about her intentions vis-a-vis their relationship, but there are no allegations of theft or fraud made against Ms. Fleury in this action. Ms. Fleury's general disposition is not an issue in question. Consequently, the evidence in issue on this voir dire has little, if any, probative value in relation to the substantive issues in this case beyond general propensity. In none of the instances discussed below do I find that the extremely limited probative value of the evidence outweighs the prejudicial effect.

(a) G.L.

[109] G.L. is a former acquaintance of Ms. Fleury's who testified about events that predated the parties' relationship. G.L. testified that he and Ms. Fleury had an affair, that he loaned her money, and that he hid \$200,000 cash in her home, which then "disappeared". Mr. Budd said that G.L.'s evidence was admissible on the basis that it is relevant to establishing that Ms. Fleury had a history of manipulating men for financial gain.

[110] G.L.'s evidence was inadmissible because it is only relevant to collateral facts, namely whether Ms. Fleury stole funds from G.L. I am not satisfied that G.L.'s evidence is admissible as similar fact evidence. There was no allegation that Ms. Fleury stole money from Mr. Budd. G.L.'s evidence was in the nature of general propensity or bad character evidence.

(b) S.D.

[111] S.D. testified about his understanding of the circumstances surrounding G.L.'s allegation that Ms. Fleury stole money from him, and his firsthand knowledge of discussions between Ms. Fleury and Mr. Budd about G.L.'s allegations. Substantively, the same evidence was given by S.D., without objection, in the trial proper. S.D.'s evidence about the latter discussions is admissible for the fact that those conversations were had and as part of the narrative of and resulting impact on S.D.'s own relationship with Ms. Fleury, but not for the truth of G.L.'s allegation that Ms. Fleury stole from him.

- [112] S.D.'s evidence about his conversations with G.L. about the loan G.L. allegedly made to Ms. Fleury and the missing \$200,000, his opinion on the veracity of G.L.'s allegations, and G.L.'s credibility more generally are all inadmissible. These were collateral issues, and S.D.'s views on G.L.'s credibility constituted improper opinion evidence and oath-helping that is of no use to the Court.
- [113] S.D.'s evidence that he saw text messages on Ms. Fleury's phone suggesting that she made unauthorized charges to her massage clients' credit cards at times pre-dating her relationship with Mr. Budd is also inadmissible. This evidence pertained only to a collateral issue and was not admissible as similar fact evidence. It was also hearsay when adduced for the truth of its contents, namely, to prove that Ms. Fleury did in fact make fraudulent charges on her massage clients' credit cards and is therefore a person of bad character.
- (c) S.C.
- [114] S.C. testified, inter alia, about her interactions with Ms. Fleury before and while she was dating Mr. Budd, and her knowledge of Ms. Fleury's alleged financial dealings with G.L. and S.D.
- [115] S.C.'s evidence about Ms. Fleury's drug use prior to meeting Mr. Budd is admissible, as is her evidence about her January 2020 communications from and with Mr. Budd. S.C.'s evidence about her interactions with Ms. Fleury over the course of their friendship and relationship with Mr. Budd from mid-2018 onwards was also admissible.
- [116] However, S.C.'s evidence about financial dealings between Ms. Fleury and G.L. constitutes hearsay in respect of a collateral issue that is not admissible as similar fact evidence. S.C.'s evidence about financial dealings between Ms. Fleury and S.D. also constitutes inadmissible hearsay.
- (d) G.A.
- [117] G.A. testified about his dealings with Ms. Fleury when he was one of her massage therapy clients, prior to her and Mr. Budd's romantic relationship. His evidence included allegations that Ms. Fleury made unauthorized charges to his credit card, failed to repay funds he loaned her, and misrepresented whether she was a registered massage therapist. Mr. Budd says that G.A.'s evidence is relevant to proving that Ms. Fleury had a history of manipulating men for personal financial gain.
- [118] G.A.'s evidence about his communications with Mr. Budd regarding Ms. Fleury is admissible. However, his evidence about his financial dealings with Ms. Fleury as a client is not admissible to prove that she made unauthorized charges on his credit card or failed to repay funds he loaned her. These are collateral issues, and G.A.'s evidence is not admissible as similar fact evidence. It is, however, admissible for the purpose of establishing the narrative for G.A.'s subsequent discussions with Mr. Budd about Ms. Fleury.

[119] Finally, G.A.'s evidence about whether Ms. Fleury represented that she was a registered massage therapist is inadmissible. G.A.'s understanding of Ms. Fleury's professional qualifications is not relevant to any of the issues before me. Again, this was a collateral issue and his evidence on this point was not admissible as similar fact evidence.

Were the parties "spouses" under the Family Law Act?

[120] Ms. Fleury bears the burden of proving, on a balance of probabilities, that she and Mr. Budd were "spouses" as defined in the FLA: *Bellerose v. Reda*, 2023 BCSC 748 at para. 48(a); *Voth v. Martin*, 2019 BCSC 834 at para. 8, citing *F.H. v. McDougall*, 2008 SCC 53 at para. 49.

[121] Under ss. 1 and 3(1)(b) of the FLA, a person is deemed to be a "spouse" if the person "has lived with another person in a marriage-like relationship for a continuous period of at least 2 years". Two criteria must therefore be met: a temporal requirement of two years of continuous cohabitation, and a qualitative requirement that the relationship be "marriage-like" in nature: *Bellerose* at para. 48(b).

[122] It is undisputed that the parties' romantic relationship started in October 2018. Ms. Fleury says that because of the parties' pre-existing longstanding and close friendship, there was no initial dating period--the relationship was immediately "marriage-like" in nature. Accordingly, she says that the parties were in a marriage-like relationship from October 26, 2018, to August 30, 2021.

[123] Mr. Budd says that the parties were not spouses because they did not start living together until September 2019 and therefore do not meet the two-year temporal requirement. He also says that Ms. Fleury did not have the necessary subjective intention to be in a marriage-like relationship with him because she did not love him; her intentions were solely motivated by personal financial gain.

[124] A contextual and holistic examination of all the relevant aspects of the parties' relationship is required to determine if a relationship is "marriage-like": *Coad v. Lariviere*, 2022 BCCA 222 at para. 127; *Jones v. Davidson*, 2022 BCCA 31 at paras. 21 and 24. Further and as noted in *Hopson v. Hannon*, 2020 BCSC 794 [Hopson]:

[119] The determination of whether a relationship was marriage-like is complicated by the variety of reasons people choose to live together, the variety of ways they structure their relationships, the variety of views as to what relationship attributes are important, and the evolution of social norms concerning marriage and marriage-like relationships: see *Takacs v. Gallo* (1998), 48 B.C.L.R. (3d) 265 (C.A.), leave to appeal ref'd, [1998] S.C.C.A. No. 238., *Austin v. Goerz*, 2007 BCCA 586 at para. 58; and *Weber v. Leclerc*, 2015 BCCA 492 at para. 7.

[125] While a "checklist" approach is to be avoided, it nonetheless remains helpful to consider the presence or absence of commonly accepted "indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship": *Weber v. Leclerc*, 2015 BCCA 492 at para. 25, leave to appeal to SCC ref'd, [2016] S.C.C.A. No. 19. Relevant factors include "shared shelter, sexual and personal behaviour, services, social activities,

economic support and children, as well as the societal perception of the couple": *M. v. H.*, [1999] 2 S.C.R. 3, 1999 CanLII 686 (SCC) [*M. v. H.*] at para. 59, citing *Molodowich v. Penttinen*, 17 R.F.L. (2d) 376 (Ont. Dist. Ct.), 1980 CanLII 1537 (O.N.S.C.) at para. 16. The extent to which these different factors will be considered will vary with the circumstances of each case: *Molodowich* at para. 16, as cited in *Armstrong v. Scholz*, 2022 BCSC 863 at para. 34.

- [126] Fundamentally, the question is whether the parties saw their relationship as one of "indeterminate, lengthy duration" or the "kind of psychological and emotional union that one associates with marriage": *Hopson* at para. 120, citing *Weber* at para. 17 and *Takacs v. Gallo*, 157 D.L.R. (4th) 623, 1998 CanLII 6429 (B.C.C.A.) at para. 55. The parties' intentions about whether their relationship will be lengthy and of an indeterminate duration may be an important factor, but are not determinative. As the Court of Appeal noted in *Weber*:
- [23] The parties' intentions - particularly the expectation that the relationship will be of lengthy, indeterminate duration - may be of importance in determining whether a relationship is "marriage-like". While the court will consider the evidence expressly describing the parties' intentions during the relationship, it will also test that evidence by considering whether the objective evidence is consonant with those intentions.
- [24] The question of whether a relationship is "marriage-like" will also typically depend on more than just their intentions. Objective evidence of the parties' lifestyle and interactions will also provide direct guidance on the question of whether the relationship was "marriage-like".

[Emphasis added.]

- [127] In addition, evidence of the parties' subjective intentions given after the relationship has ended must be tested against objective evidence of their lifestyle and interactions, which provides direct guidance on the nature of the relationship: *Hopson* at para. 120, citing *Weber* at paras. 23-24 and *Takacs* at para. 53; see also *Bellerose* at para. 48(f). This is particularly the case because while a party may subjectively believe that they are or are not in a marriage-like relationship, the reality may be otherwise: *Kneller v. Greenwood*, 2015 BCSC 1410 at para. 100, citing *Takacs* at para. 53.
- [128] A person is either a "spouse" or is not. There is no middle ground. It must also be borne in mind that while a marriage-like relationship is akin to a marriage without the formality of a marriage, people treat their marriages differently and have different conceptions of what marriage entails: *Bellerose* at para. 48(h).

Objective indicators of marriage-like relationships

- [129] I will start by considering the objective indicia of marriage-like relationships. As will become evident from the analysis below, I find that each of the objective indicators weighs in favour of the parties being in a marriage-like relationship.

(a) Cohabitation and shelter

[130] It is uncontested that the parties lived together at Mr. Budd's Fuller and California Properties from September 2019 to August 30, 2021. This period alone is just days shy of the two-year requirement. The question is therefore whether the parties were living together in a marriage-like relationship prior to September 2019.

[131] Ms. Fleury says that the parties were living together as of October 26, 2018, when she started spending at least four nights a week with Mr. Budd, and that by January 2019, she was spending seven nights a week with him. Mr. Budd says that he did not subjectively intend to live with Ms. Fleury until September 2019. His position seems to be that even if Ms. Fleury was in fact living with him prior to September 2019, they were not "living together in a marriage-like relationship" as the FLA requires because he did not subjectively intend that to be the case.

[132] I do not accept either of the parties' positions. While they did travel together extensively in October and November 2018, this does not mean that they were cohabitating. Rather, I accept S.D.'s evidence that when Ms. Fleury was in Kelowna in the fall of 2018, she continued to live with S.D. at the KLO Property, which was his home in Kelowna. I therefore find that Ms. Fleury was not living with Mr. Budd in 2018.

[133] However, Mr. Budd's position that Ms. Fleury did not live with him until September 2019 is equally untenable and particularly difficult to reconcile with the preponderance of the evidence. To make that finding, I would need to conclude that Ms. Fleury continued to live at the KLO Property until the end of March 2019, then lived at the Sunset Condo from April 2019 to September 2019. Neither of these assertions is borne out on the evidence.

[134] First, on January 6, 2019, Mr. Budd made a post to his Facebook page showing pictures of Ms. Fleury's dog, Larry, in the Main House at the Fuller Property, with the following caption:

Well I really didn't plan to be living alone this long. As my emotional capacity returned to full levels in 2018 I have decided to spread a little more love and share my space with someone special starting 2019.

[Emphasis added.]

[135] Mr. Budd was adamant that Larry was Ms. Fleury's dog, not his and there is no evidence that he ever cared for Larry in Ms. Fleury's absence. C.H. testified that Larry was at the Fuller Property whenever Ms. Fleury was. No evidence was led to suggest Mr. Budd cared for Larry in Ms. Fleury's absence. The obvious, and in my view only, logical inference to be drawn from Mr. Budd's Facebook post is that as of January 2019 he was not only sharing his space with Larry, but also with Ms. Fleury.

- [136] Second, the parties' housekeeper, J.H., testified that she started cleaning the Fuller Property in January 2019, and did not clean the KLO Property from January 2019 until late March 2019, when she went back to do a final clean after Ms. Fleury moved her things out. It is, in my view, improbable that J.H. would start cleaning at the Fuller Property in January 2019 and not clean the KLO Property from January to March 2019, if Ms. Fleury was still living at the KLO Property during that timeframe.
- [137] J.H. also testified that in January 2019, C.H. referred to Ms. Fleury as "the lady of the house" and instructed J.H. to respect Ms. Fleury's things and make sure she had the toiletries she needed. Further, when J.H. started cleaning at the Fuller Property, she saw Ms. Fleury's cosmetics in the master bathroom and her other possessions in a bedroom across from Mr. Budd's that C.H. referred to as "the lady's room". I found J.H. to be a credible and reliable witness, and I accept her evidence. She provided her recollection of events clearly and directly and took care to identify when she could not recall matters precisely.
- [138] Third, while S.D. temporarily moved out of the KLO Property from January to March 2019, he testified that he would drive by the house on his way home from work every day and noticed that there never appeared to be anyone there. In mid-January 2019, S.D. went inside the KLO Property and found love letters from Mr. Budd to Ms. Fleury dating back to November or December 2018. This discovery was very upsetting for him as it made him realize that the parties' relationship had been going on for some time prior to his and Ms. Fleury's separation.
- [139] S.D. left one of the cards on the kitchen counter for Ms. Fleury to find when she got home. He waited for Ms. Fleury to find the card and reach out to him, but she never did. He eventually texted Ms. Fleury and when she told him she was at the KLO Property, he confronted her, telling her that could not be true because if it was, she would have found the card. I accept S.D.'s evidence on this point and find it supports an inference that Ms. Fleury was spending most of her time with Mr. Budd at the Fuller Property from January 2019 onwards.
- [140] Mr. Budd testified that he did not know where Ms. Fleury was living from April to September 2019 and that he presumes she was living at the Sunset Condo during this timeframe. I reject his evidence on this point. It strains credulity that, given the amount of time the parties were admittedly spending together from January 2019 onwards, Mr. Budd did not know where Ms. Fleury was living.
- [141] I prefer Ms. Fleury's evidence on this point as it is more consistent with the objective and independent evidence, and I find that she never lived at the Sunset Condo. I find that the Sunset Condo was rented for "optics" to support the narrative that Ms. Fleury was not actually living with Mr. Budd, and that he paid the rent on the Sunset Condo either directly or indirectly through the funds he was providing to Ms. Fleury. This is consistent with Mr. Budd's conduct and the lengths to which he was prepared to go to create and substantiate a false narrative that he and Ms. Fleury were not cohabitating.

- [142] Mr. Budd admitted that he never went to the Sunset Condo. Given the amount of time the parties were spending together during the relevant time frame, I find this admission serves as compelling evidence that Ms. Fleury never lived at the Sunset Condo. The absence of any evidence that Ms. Fleury's family or friends attended or spent time with her at the Sunset Condo is also consistent with that conclusion. Ms. Fleury also used the Fuller Property--not the Sunset Condo--as the delivery address for her personal online purchases from at least March 2019 onwards.
- [143] Further, the Sunset Condo was sublet to C.C. as of August 1, 2019. C.C. testified that when she visited the condo before subletting it, it was apparent that no one had been living there for some time as it had boxes everywhere and was not in livable condition. She described it as "a nice storage unit". She also confirmed that Ms. Fleury never stayed at the Sunset Condo while she was subletting it. I accept C.C.'s evidence on this point. It also corroborates Ms. Fleury's evidence and is consistent with an email Ms. Fleury sent to the rental property manager on September 9, 2019, stating she had "yet to stay a night" at the condo.
- [144] Finally, I must address Mr. Budd's December 2019 Facebook post, in which he purportedly announced that he and Ms. Fleury had decided to live together. On December 19, 2019, Mr. Budd posted a photo of Ms. Fleury with Larry and a suitcase standing in the driveway of the Fuller Property, and a photo of a moving truck, to his profile page with the following caption:

BREAKING NEWS

Well after nearly 13 years of living solo I am taking the plunge and Kaitlynn and I have decided to live together. Will be celebrating Xmas together with her Dad and step mom, brother and all of my family hosted in our house. Wish my boys were here to experience this

- [145] Neither of the photographs contained in the Facebook post were taken in December 2019. The photograph of Ms. Fleury was taken earlier in the fall of 2019. The photo of the moving truck was taken by C.H. in September 2019. C.H. testified that she took the photo because she "felt it was important for us to have a record of the move-in date", giving the impression that it was her idea to take the photo. However, she also conceded that she did so because Mr. Budd called her and asked her to take a picture when the moving truck arrived. I find that Mr. Budd instructed C.H. to take the photograph and that this is yet another example of the extent to which he attempted to perpetuate a misleading narrative about the status of the parties' relationship.
- [146] Mr. Budd admitted on cross-examination that his December 2019 Facebook post was inaccurate. It is also irreconcilable with the position he took at trial, namely that the parties started cohabitating in September 2019. In the circumstances, I find that Mr. Budd knew that the December 2019 Facebook post was inaccurate when he made it, and that he posted it to substantiate a false public narrative that Ms. Fleury had only just moved into the Fuller Property in December 2019, when they had in fact already been living together for almost a

year. It is also notable in this respect that the first draft of the cohabitation agreement included a cohabitation start date of December 2019.

[147] Considering the preponderance of the evidence, and giving particular weight to that of S.D., C.C., and J.H., I find that Ms. Fleury and Mr. Budd were living together by the end of January 2019 at the latest. I therefore find that the parties were cohabitating from February 2019 through to August 30, 2021, which constitutes a period of approximately 31 months.

(b) Services

[148] This factor involves consideration of the parties' conduct and habits in relation to tasks such as preparation of meals, washing and mending clothes, shopping, household maintenance, and other domestic services. Mr. Budd's significant wealth makes this factor less determinative in the present case as he had two personal assistants, a housekeeper, and a gardener who handled most of these tasks for him and Ms. Fleury.

[149] Nonetheless, from late 2018 onwards, Mr. Budd asked his staff to ensure that the Fuller Property was stocked with supplies to meet Ms. Fleury's needs. Ms. Fleury also took it upon herself to grocery shop for Mr. Budd, attended to some of his medical needs, and attempted to make healthy foods and juices for him.

[150] Also in late 2018, C.H. trained Ms. Fleury to assist with managing and maintaining the California Property. Ms. Fleury was provided with access to Mr. Budd's American banking facilities for this purpose and continued to assist in this regard over the course of the relationship. Ms. Fleury also provided some assistance to Mr. Budd with his philanthropic work and fundraising endeavours, primarily prior to the onset of the COVID-19 pandemic in early 2020.

(c) Sexual and personal behaviour

[151] It is uncontested that from 2015 to the fall of 2018 the parties developed a close, personal friendship and relied on each other for emotional support during difficult times in their respective lives. They shared intimate details about their families and personal struggles, including the deaths of Mr. Budd's sons and his drug use, and Ms. Fleury's ectopic pregnancy.

[152] The parties became sexually intimate in mid-November 2018 at the latest, and this sexual intimacy continued over the course of the relationship. Both testified at length about their sexual activities, which also at times involved third parties. Mr. Budd raises allegations of infidelity against Ms. Fleury and a significant amount of evidence was adduced on that issue. I have considered the whole of the evidence on this point, but will refer only to that which I find necessary to the present analysis.

[153] Starting in November 2019 and from time to time thereafter, the parties engaged in sexual activities with third parties. This predominantly occurred when they were using drugs and involved Ms. Fleury having sexual intercourse with other men while Mr. Budd was present.

While both parties say this was at the other's request, I find that engaging in this conduct was a mutual decision and that Ms. Fleury's participation was voluntary. Mr. Budd had engaged in such activity with prior partners, and Ms. Fleury was willing to do so with him as well. Both participated in selecting the third-party participants, using mobile apps and photos of Ms. Fleury.

- [154] In so concluding, I reject Ms. Fleury's evidence that Mr. Budd coerced her into engaging in sexual activity with third parties. In addition to my overarching concerns about Ms. Fleury's credibility generally, her evidence on this issue was both internally inconsistent, and inconsistent with the weight of evidence of other individuals who participated in these activities with the parties.
- [155] First, Ms. Fleury's assertion of coercion is difficult to reconcile with her evidence that she and Mr. Budd chose the escorts they would engage with together, and that she was only comfortable engaging with a small number of other men, not a multitude of different partners. It is also difficult to reconcile with her evidence that absent any involvement from Mr. Budd, she engaged in sexual activity with S.W. and A.D. in August 2020, and with her admission that she did not engage when she did not want to.
- [156] I am cognizant that some of the audio recordings, particularly those from July and August 2021, show Mr. Budd getting extremely angry at Ms. Fleury when she did not want to engage in sex acts with other men. However, these recordings do not establish that her participation was forced or coerced. To the contrary, they showed that she did not participate when she did not want to and then suffered the consequences of Mr. Budd's ire.
- [157] Second, the weight of the evidence from the multiple third parties who participated in sexual activity with the parties is that Ms. Fleury was a willing, and at times enthusiastic, participant. Each of D.D., S.P., R.K., and I.B. testified that they observed Ms. Fleury to be a willing participant in the sexual activities that they engaged in with her and Mr. Budd.
- [158] S.P. met Mr. Budd and Ms. Fleury at the Fuller Property in the spring of 2020 and engaged in sexual activity with Ms. Fleury. He perceived Ms. Fleury to be nervous and a little bit shaky--as was he. He also recalled that Mr. Budd wanted to invite more men to join them and felt a little bit bad about the situation because it did not seem to him that Ms. Fleury was "totally into it, as I thought she had been at first". However, S.P.'s evidence did not go so far as to suggest that he perceived Ms. Fleury as an unwilling participant in the sexual activities they engaged in earlier, or that she was coerced into doing so. Indeed, about ten minutes after leaving, S.P. was asked to return, which he did, and engaged in "more of the same". S.P. also returned to the Fuller Property for the same purpose at least two more times in the summer of 2020. On one of these occasions, Ms. Fleury did not want to engage in sexual activity, so he left.

- [159] R.K. was invited over to the Fuller Property in July 2020, after responding to a posting on a dating app. He met Mr. Budd and Ms. Fleury, who was dressed in lingerie, and engaged in sexual intercourse with her with Mr. Budd present. R.K. was asked to return two more times that same evening and engaged in further sexual activity with Ms. Fleury with Mr. Budd present. At no point did Ms. Fleury appear to him to be forced or an unwilling participant.
- [160] I.B. met the parties in the summer of 2020 when a friend invited him to a "sex party" at the Fuller Property. Ms. Fleury opened the door dressed in a provocative lace catsuit. Her demeanour was comfortable and friendly, and he found her to be pleasant and outgoing. He engaged in sexual activity with Mr. Budd, while his friend engaged with Ms. Fleury. He observed Ms. Fleury to be very confident and comfortable with the situation.
- [161] Finally, D.D. was invited to the Fuller Property in late June 2021 after he responded to an online posting for a "sex party". Ms. Fleury instigated sexual activity with him and his girlfriend. D.D. did not perceive Ms. Fleury's participation to be forced or coerced. Ms. Fleury spent time with him and his girlfriend well into the following day and accompanied them back to D.D.'s house for a period of time.
- [162] Based on the preponderance of the evidence, I find that Ms. Fleury was a willing and consensual participant in the sexual activities she and Mr. Budd engaged in with third parties over the course of their relationship. I also find that when Ms. Fleury did not want to engage in such activities, she chose not to, as Mr. Budd and S.P. both testified. Ms. Fleury's occasional refusal to engage in these sexual activities angered Mr. Budd, who responded in a verbally abusive manner towards her. Nonetheless, I am satisfied that Ms. Fleury engaged in the sexual activities put in issue in this litigation when she was willing and was not forced or coerced by Mr. Budd to do so when she was not.
- [163] Mr. Budd also raises allegations of infidelity against Ms. Fleury, asserting that she surreptitiously engaged in sexual activity with R.K. and S.P. when he was not present. Ms. Fleury denies these allegations, as did S.P. On the other hand, R.K. testified to multiple instances of surreptitious sexual activity with Ms. Fleury.
- [164] In my view, whether Ms. Fleury engaged in sexual activity with other men when Mr. Budd was not present is not a material factor in the analysis for two reasons. First, Mr. Budd himself engaged in sexual activity with third parties without Ms. Fleury present on multiple occasions during the relationship when he was on a "runaway" and using drugs. Neither party argued that Mr. Budd's conduct in this respect was indicative of a lack of fidelity on his part, and Ms. Fleury appears to have accepted that these episodes were a challenge for Mr. Budd that she was willing to navigate along with him within their relationship.

- [165] Second, the fact that spouses have affairs is not necessarily inconsistent with the existence of a marriage-like relationship: *Hoy v. Wagemans*, 2023 BCSC 682 at para. 48. A cautionary approach is required in using infidelity as a determinative factor: *L.T.F. v. R.B.F.*, 2023 BCSC 834 at para. 99, citing *Coglon v. Coglon*, 2021 BCSC 410 at paras. 70-73. I find this is especially the case within the context of this relationship.
- [166] Regardless, I find R.K.'s evidence about the nature and extent of his relationship with Ms. Fleury (separate from the sexual activity he engaged in with both parties), to be exaggerated and unreliable. I do not accept that he and Ms. Fleury frequently engaged in repeated instances of surreptitious sexual activity at the Tuscan House. Despite the extensive surveillance system in place at the Fuller Property, there was no surveillance footage of such activity, or of R.K. arriving at or leaving the property. There were also multiple house guests staying at the Tuscan House during the relevant time frame, but none of them testified to seeing R.K. at the property. J.H.'s evidence that she found wine glasses and possibly drug paraphernalia is not proof of the alleged sexual activities.
- [167] Thus, while I cannot conclusively determine whether Ms. Fleury and R.K. had sexual intercourse other than in Mr. Budd's presence, given the open nature of the parties' sexual relationship, I am not satisfied that whatever sexual activity Ms. Fleury and R.K. may have engaged in is indicative of a lack of fidelity on Ms. Fleury's part.
- [168] In the result, I find that the parties were sexually intimate over the course of their relationship and maintained an attitude of fidelity towards one another, despite occasionally participating in sexual activities with third parties both together and individually.
- [169] As to the parties' feelings towards one another, Mr. Budd was in love with Ms. Fleury and referred to her as "the love of his life". Ms. Fleury testified that she was also in love with Mr. Budd. In retrospect, Mr. Budd says Ms. Fleury deceived him and never really loved him. Regardless, the parties became engaged on August 11, 2020, and remained engaged until the relationship ended on August 30, 2021.
- [170] With respect to health and wellness, I find that the parties intended to care for each other and did in fact do so. I find that Ms. Fleury was supportive of Mr. Budd's efforts to combat his addiction and stay clean, but that over the course of the relationship, both parties engaged in drug use, which became extensive to the point where each of them overdosed: Mr. Budd in Manhattan Beach in November 2020, and Ms. Fleury in Kelowna in July 2021.
- [171] I reject Mr. Budd's assertion that Ms. Fleury was predominantly responsible for bringing drugs into their home and was therefore also to blame for his ongoing usage to the point of excess. Both parties had a history of drug use prior to their relationship, and the overwhelming weight of the evidence demonstrates that they each enabled the other in their extensive and progressively worsening drug use over the course of the relationship. The parties' drug use had a detrimental impact on their physical and mental health, limited their ability to assist one another in making healthier choices and reducing their drug use,

and was a significant contributing factor to the end of the relationship.

(d) Social/Societal

[172] The parties were long-time friends and integrated their social and family lives early on in their relationship. Mr. Budd hosted Ms. Fleury's friends and family at his Manhattan Beach Property in the fall of 2018, and the parties celebrated Christmas in 2018 with both of their families at the Fuller Property. They did the same for Easter in 2019 and Christmas in 2019.

[173] While the parties largely kept their relationship private from October through December 2018, I find that from January 2019 onwards, they openly engaged in the community as a couple and presented themselves as such. They attended fundraisers and other charitable events together as a couple in January, February, August, September, and November 2019, and January and February 2020, until the onset of the pandemic severely curtailed public gatherings.

[174] From early 2019 onwards, the parties attended dinners, concerts, and celebrations with friends and family, including travelling to Red Deer for B.G.'s surprise 60th birthday party in June 2019. They also announced and celebrated their engagement with family and friends at a joint birthday/engagement party that Mr. Budd hosted for his niece on August 18, 2020.

[175] The parties travelled with Mr. Budd's father and his girlfriend, on multiple occasions, including to Palm Springs in March 2019, New Brunswick in August 2019, and Manhattan Beach in October 2019. On the latter trip, Mr. Budd posted a photo of the parties and his father and partner to his Facebook profile captioned:

One year ago, in this restaurant in Manhattan Beach CA, Kaitlynn and I discussed the possibility of turning our 3 year friendship into something more intimate and meaningful. I made the right decision and glad to share tonight with family who have supported our decision

[176] Mr. Budd and Ms. Fleury were welcoming and supportive of each other's families. Mr. Budd was particularly generous to Ms. Fleury's family, including by allowing Ms. Fleury's father, M.F., and his wife, T.F., to stay at the Tuscan House in April 2020, and her brother, L.F., and his partner to stay there for several weeks in August 2020. Mr. Budd also provided financial assistance to L.F. and M.F. Ms. Fleury also supported Mr. Budd's family when Mr. Budd's father passed away in late August 2020 and assisted Mr. Budd's sister with planning a celebration of life.

(e) Economic support

[177] Mr. Budd is a man of significant wealth and funded the lavish lifestyle that the parties enjoyed throughout their relationship. The parties agree that over the course of the relationship, Mr. Budd spent \$750,000 on account of gifts and expenses for Ms. Fleury's benefit.

- [178] With respect to Ms. Fleury's financial circumstances, when their friendship transitioned to a romantic relationship, Mr. Budd was her main massage therapy client. Within a short period of time thereafter, Ms. Fleury stopped working as a massage therapist because she felt she could not maintain a practice while travelling extensively with Mr. Budd and was spending long periods of time at his home in California. Ms. Fleury continued to do a small amount of yoga teacher training, but her income was insufficient to support herself.
- [179] Consistent with this, from November 2018 onwards, Mr. Budd provided Ms. Fleury with a monthly budget or allowance for her expenses. The budget was initially \$6,000 per month but increased significantly over the course of the relationship. Mr. Budd also provided Ms. Fleury with access and permission to use his credit cards, which she used for living expenses, personal expenses, and shopping. For the first few months, Ms. Fleury provided receipts to assistant C.H., but this stopped in January of 2019 such that her use was effectively unrestricted. Ms. Fleury also had access to Mr. Budd's American banking facilities, which she used for the maintenance and expenses for the Manhattan Beach Property, and for living expenses when they were in California.
- [180] By late 2019, Mr. Budd was becoming concerned about the amount of money Ms. Fleury was spending, which he characterized as "excessive". He worried she may have had a shopping addiction. Accordingly, in May 2021, he provided her with a separate credit card under his account, but in her own name with a limit of \$10,000.
- [181] While Ms. Fleury had access to other funds during the parties' relationship--including the remaining proceeds of her settlement with S.D.--I find that from 2019 onwards, she was, for all intents and purposes, no longer working and was financially dependent on Mr. Budd.
- [182] The parties did not have any jointly owned property, but they did share vehicles. After receiving the proceeds of her settlement with S.D., Ms. Fleury purchased a BMW, which she and Mr. Budd took to Manhattan Beach and jointly used when they were in California. In Kelowna, Ms. Fleury predominantly drove Mr. Budd's Porsche SUV.
- [183] Mr. Budd also made provision for Ms. Fleury in his will, though the value of the bequest is disputed. Mr. Budd testified that he provided a \$500,000 bequest. However, in November 2020, he told Ms. Fleury that he had given her \$50,000,000 in his will. While Mr. Budd's will was not adduced into evidence, the precise amount bequeathed to Ms. Fleury is immaterial for present purposes. The relevant fact, which is undisputed, is that Mr. Budd intended to ensure Ms. Fleury's continued financial security in the event of his passing.
- [184] Moreover, in January 2021, Mr. Budd gave \$5 million to his friend G.D.M. C.H. testified that when Mr. Budd did so, he told her that he wanted G.D.M. to have that money to look after Ms. Fleury in case something happened to him. I acknowledge that C.H.'s evidence constitutes hearsay when adduced for the truth of Mr. Budd's statement; however, I find it is admissible as an admission against interest: see e.g. *Egan v. Andrychuk*, 2022 BCCA 110 at para. 53.

[185] Accordingly, I find that Mr. Budd provided financial support to Ms. Fleury throughout the course of their relationship and that she was financially dependent on him. I also find that Mr. Budd made provision for Ms. Fleury's future financial security in the event of his death.

[186] Considering the objective indicators, I find that both individually and cumulatively, they all weigh in favour of a finding that the parties were living in a marriage like-relationship from February 2019 to August 30, 2021.

Did Ms. Fleury subjectively intend to be in a marriage-like relationship?

[187] Mr. Budd says that irrespective of whether the parties met the temporal requirement, their relationship was not "marriage-like" because Ms. Fleury did not love him and therefore did not have the necessary subjective intent. Mr. Budd says that he was in love with Ms. Fleury and wanted to build a life with her, but that she saw him and their relationship as a means to a lavish lifestyle. Mr. Budd submits that Ms. Fleury's intentions "were entirely motivated by self-interest" such that she did not "form the lasting commitment to care for Mr. Budd as her husband".

Are the parties' subjective intentions determinative?

[188] As stated in his closing argument, the central tenet underpinning Mr. Budd's position is that "the only necessary requirement for a marriage-like relationship is the parties' mutual intention to enter such a relationship" (emphasis added).

[189] It is settled law that the parties' subjective intentions, particularly the expectation that the relationship will be of a lengthy, indeterminate duration, are an indicium of a marriage-like relationship: Weber at para. 23. Mr. Budd's position goes further: he says the parties' subjective intentions are the only necessary requirement, such that their absence precludes finding a marriage-like relationship.

[190] In support of this submission, Mr. Budd relies on Takacs at paras. 37-38, which in turn cites Gostlin v. Kergin (1986) 3 B.C.L.R. (2d) 264 at 267-268. Takacs was revisited in Weber, where the Court of Appeal moved away from Gostlin. In doing so, the Court noted that the commentary in Gostlin about the definition of spouse was "entirely obiter" and difficult to fully understand when read 30 years later:

[10] This discussion of the [definition of "spouse"], though heavily relied upon by Ms. Leclerc, was entirely obiter, since the issue in Gostlin was not whether the parties were spouses - that much was conceded - but rather, whether the fact that they were unmarried should diminish the amount of a support award.

- [12] That said, it is difficult from this vantage point, some 30 years after Gostlin, to fully understand the reasoning expressed in the passage that I have quoted. It is based on the idea that marriage is a relationship characterized by economic dependence or interdependence. Perhaps marriage was, or was perceived to be, such a relationship at that time. Today, though economic dependence or interdependence exists in many marriages, it would be difficult to characterize such dependency as being an essential characteristic of marriage.
- [13] It is, in any event, somewhat difficult to follow the reasoning of the obiter statements in Gostlin. If the legislature had intended to impose obligations on spouses only if the spouses themselves intended such obligations to be imposed, it could have simply allowed couples to enter into cohabitations agreements explicitly setting out their mutual obligations. Similarly, if the Act had been intended to apply only to relationships of economic dependence or interdependence, it could easily have said so, rather than using the far less precise phrase "living together as husband and wife".
- [191] The characterization of a relationship as marriage-like is contextual and requires consideration of both subjective intention and objective factors. Where there is evidence of the parties' subjective intentions, this evidence may be tested by reference to the objective evidence: Jones, at para. 24. This is consistent with Weber, where the Court noted that questions of whether a relationship is "marriage-like" will typically depend on more than just the parties' subjective intentions:
- [24] The question of whether a relationship is "marriage-like" will also typically depend on more than just their intentions. Objective evidence of the parties' lifestyle and interactions will also provide direct guidance on the question of whether the relationship was "marriage-like".
- [25] Ms. Leclerc argues that approaches like that taken in *Molodowich v. Penttinen* nothing more than "checklists", and do not adequately analyse the nature of a relationship. While I agree that a checklist approach is not appropriate, it is my view that cases like *Molodowich* are helpful as indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship.
- [emphasis added]
- [192] This articulation of the role that the parties' subjective intentions play in the analysis of whether a relationship is "marriage-like" in Weber was affirmed in Jones at para. 22. The parties' subjective intentions are thus an important factor in the analysis, but not the "only necessary requirement" as Mr. Budd submits. Subjective intentions must be considered and tested against the objective indicia of marriage-like relationships as set out in *Molodowich* at para. 16 and referred to with approval in *M. v. H.* at para. 59.
- [193] Mr. Budd also relies on *Dey v. Blackett*, 2018 BCSC 244. Dey recognizes that an intention to enter into a relationship of indeterminate and lengthy duration is the focus of the analysis, but also affirms the role that objective indicia play in testing the parties' professed intentions, or lack thereof: at para. 235. When read together, Dey and Weber confirm that

the focus of the analysis is whether the parties subjectively intended to enter into a relationship similar to marriage: Weber at para. 17; Dey at para. 208. However, Weber then goes on to note that such intention "may be of importance" (emphasis added) in determining whether a relationship is marriage-like: para. 23.

- [194] Given that there is no "checklist" of characteristics that are invariably found in all marriages, the presence or absence of any particular factor cannot be considered determinative of whether a relationship is marriage-like: Coad at para. 127, citing *Austin v. Goerz*, 2007 BCCA 586 at para. 58. Historical definitions of marriage also have little relevance in application to modern relationships which are no longer defined by financial dependence, sexual relationships, or the commingling of property and finances: Coad at para. 127.
- [195] It is the relationship as a whole that must be considered, including both objective conduct and subjective intentions. Objective indicia may support a finding that a relationship was "marriage-like" even where one party's subjective intention is otherwise. A party may subjectively believe that they are or are not in a marriage-like relationship, but the reality, as indicated by the objective indicia, may be otherwise: *Takacs* at para. 53; *Volk v. Tyrrell*, 2024 BCSC 326 at para. 23.
- [196] The circumstances in *Volk* are illustrative. Ms. Tyrrell subjectively intended to limit her relationship with Mr. Volk to a financial partnership, yet despite this lack of subjective intention to be in a marriage-like relationship, the Court nonetheless concluded that the preponderance of the objective evidence demonstrated that she and Mr. Volk were in fact living in a marriage-like relationship: para. 187. Thus, as *Volk* demonstrates, the parties' subjective intentions may be overtaken by their conduct such that despite a party disavowing any intention to live in a marriage-like relationship, the relationship may nonetheless have become such.
- [197] Put differently, when their actual relationship surpasses their subjective intentions, people may find themselves in a marriage-like relationship without seeing it that way themselves: *Lemire v. Von Hollen*, 2023 BCSC 1348 at para. 58, citing Coad at paras. 128-130 and *Takacs* at para. 53. As noted in *Dey*, "while intention is the key, a partner who claims or disavows such an intention may not be believed if all of the surrounding circumstances strongly imply the contrary": para. 235.
- [198] In my view, Mr. Budd's contention that subjective intent is the "only necessary requirement" for a marriage-like relationship cannot be reconciled with the nuanced and contextual analysis mandated by the jurisprudence. I also reject his assertion that it is only necessary to examine objective indicators of a marriage-like relationship when the subjective intentions of the parties cannot be gleaned. Such an approach appears to rely on an interpretation of the *Gostlin* test that is at odds with the modern jurisprudence, the overwhelming weight of which requires a holistic and contextual analysis which considers subjective intentions and objective evidence to determine the ultimate characterization of

the relationship: see e.g., Jones at para. 24.

Is romantic love required for a marriage-like relationship?

- [199] Mr. Budd also contends that Ms. Fleury did not have the necessary subjective intent to be in a marriage-like relationship with him because she was not "in love" with him. In doing so, he imports the concept of romantic love as a precondition to a relationship being "marriage-like". Put conversely, his position is that a relationship cannot be "marriage-like" unless the parties share romantic love for one another.
- [200] The key question as it relates to the parties' subjective intentions is whether they intended to be in a relationship of a lengthy and indeterminate duration: see Weber at paras. 17, 23. I find no support in the jurisprudence for the court embarking on an inquiry into the motivations that underlie a party's subjective intentions. Mr. Budd provided no authority to that effect.
- [201] While many people marry or enter into marriage-like relationships because they share romantic love for one another, romantic love has never been a requirement to enter into a marriage. Nor, in my view, should it be one for people to meet the definition of "spouse" under the FLA. This would set a higher bar for a marriage-like relationship than for a marriage itself. Mr. Budd's position fails to recognize that people choose to marry, or enter into marriage-like relationships, for a variety of reasons that are entirely independent of modern concepts of romantic love--i.e. for religious, personal, familial, or financial reasons. The law does not consider those relationships any less valid.
- [202] People also stay in marriages and marriage-like relationships for various reasons, which may change or evolve over time. People may enter into a marriage-like relationship because they love one another and want to spend their lives together, but then choose to stay in the relationship for other reasons, e.g., financial security, companionship, or to raise children. The opposite may also be true. Romantic love may or may not be a present in a marriage or marriage-like relationship at any given point in time.
- [203] The relevant inquiry is whether a marriage-like relationship exists, not the quality of that relationship: J.J.G. v. K.M.A., 2009 BCSC 1056 at para. 71. As the Court stated in J.J.G. at para. 71, partially citing J.A.B. v. H.W.C., 2008 BCSC 644 at para. 115:
- 'Just as not all marriages flourish, marriage-like relationships are not all healthy.' The fact that a relationship may have been unhappy or temptuous [sic] at times does not support a finding that no marriage-like relationship existed or that the relationship ceased to be marriage-like.
- [204] The Court does not assess the motivations behind the parties' intentions, nor does the law require that the subjective intention to be in a marriage-like relationship derive from a particular motive, i.e. romantic love. The analysis asks whether, based on the subjective evidence assessed contextually in light of the objective indicators, the necessary subjective intent was present, not why the parties had that intent.

[205] Turning to the present case, the motivations underpinning Ms. Fleury's subjective intent to be in a marriage-like relationship with Mr. Budd--i.e. because she loved him, she enjoyed the lifestyle he provided, or on account of any combination of reasons--are not something that this court can determine with any certainty. Nor, for the reasons set out above, is such an assessment mandated by the definition of "spouse" in the FLA or applicable jurisprudence. The parties' respective reasons for being in a marriage-like relationship may be different, but that does not negate the finding of a subjective intention to be in a marriage-like relationship. Whether Ms. Fleury's intentions were motivated by romantic love, financial factors, or some combination of these or other influences does not alter the nature or relevance of her intentions.

Did the parties subjectively intend to be in a marriage-like relationship?

[206] Ascertaining the parties' subjective intentions is complicated by the credibility concerns that arise in respect of both of their evidence. Considering the preponderance of the evidence about their relationship as a whole and assessing the parties' stated subjective intentions against the objective indicators, I find that both parties subjectively intended to be in a relationship of a lengthy and indeterminate duration from February 2019 through to the end of August 2021.

[207] One significant and important outward expression of the parties' subjective intentions is their engagement, which I find demonstrative of a psychological and emotional union and mutual intention to be in a relationship of a lengthy and indeterminate nature. They began shopping for an engagement ring in May 2020, they were engaged on August 11, 2020, and they remained so until Mr. Budd ended the relationship on August 30, 2021. Neither party broke off the engagement despite episodes of significant conflict in their relationship. Ms. Fleury remained engaged to Mr. Budd despite his increasingly demeaning and verbally abusive behaviour towards her.

[208] I find that the following factors are also illustrative of the parties' emotional commitment to one another and their corresponding mutual intentions to be in a relationship of a lengthy and indeterminate nature:

- a) Their romantic relationship was preceded by and arose out of a three-year close, personal friendship;
- b) Mr. Budd's own evidence was that Ms. Fleury frequently told him how much she loved him, more than any other previous partner;
- c) The video of the parties interacting when announcing their engagement to family and friends demonstrates public affirmation of their commitment to one another;
- d) Mr. Budd's continued financial support of Ms. Fleury despite his increasing concerns about her spending habits; and

- e) Ms. Fleury's ongoing support and devotion to Mr. Budd despite his drug relapses and resulting behaviour and consequences.

[209] While I have rejected Mr. Budd's position that a relationship can only be marriage-like if the parties' subjective intentions are motivated by romantic love, I will nonetheless address his submission that Ms. Fleury's conduct shows that she did not love him because it formed a central tenet of his position at trial.

[210] First, Mr. Budd says that Ms. Fleury did not love him because she brought drugs into the Fuller Property and enabled his ongoing drug use. I am not satisfied that Ms. Fleury was solely, or even principally, responsible for drugs being brought into the Fuller Property, or for Mr. Budd's use thereof. The record is replete with examples of both parties procuring drugs, bringing them into their homes, and encouraging the other to engage in drug use over the course of their relationship. Both parties had connections through which they procured and "cooked" cocaine and they engaged in drug use with friends and neighbours--they were even given strawberry cocaine as an engagement present. Ms. Fleury's participation in what I find to be mutual and voluntary drug use by both parties is not indicative of a lack of love for Mr. Budd.

[211] Second, Mr. Budd says that Ms. Fleury intended to leave the relationship as soon as the two-year cohabitation requirement under the FLA was met. In Mr. Budd's submission, Ms. Fleury's intentions in that respect can be inferred from her conduct in bringing personal items home from California in April 2021, and statements she made to S.W. and A.D. in August 2021.

[212] Mr. Budd says that Ms. Fleury brought the bulk of her high-value personal items back to Kelowna in April 2021 because she did not intend to still be in a relationship with him when they would customarily return to California in the fall of 2021. Much evidence was tendered on this point, yet on balance, I am unable to draw the inference that Mr. Budd seeks. While Ms. Fleury did bring many of her possessions back to Kelowna in April 2021, she left other personal items in California. Mr. Budd's position is also difficult to reconcile with the fact that after April 2021, the parties continued to negotiate a term in the draft cohabitation agreement that provided compensation for Ms. Fleury for the reasonable costs of bringing her vehicle and personal effects back from California.

[213] I accept that at various points in time, Ms. Fleury was questioning whether she would continue to stay in the relationship with Mr. Budd and considered the financial implications of doing so. She discussed this with her counsellor in December 2020 and January 2021, and with S.W. in late August 2021. However, the fact that Ms. Fleury at times questioned staying in the relationship does not, in my view, prove that she never loved Mr. Budd, nor does it negate her intention to be in a marriage-like relationship with him. It is also material that Ms. Fleury made the statements in issue at points of high conflict in the parties' relationship, including after episodes of drug use on Mr. Budd's part and, in respect of the August 2021 discussion with S.W., when she was undisputedly heavily addicted to cocaine

and was using daily.

- [214] I also reject Mr. Budd's contention that as of August 2021, Ms. Fleury was simply "putting in time" until she crossed the two-year cohabitation mark. This theory is predicated on the assumption that the September 1, 2019, cohabitation start date contained in the draft cohabitation agreement was accurate, such that the two-year threshold would have been crossed on September 1, 2021. However, the cohabitation agreement was never signed, and Ms. Fleury consistently maintained that the parties started living together long before September 1, 2019.
- [215] Finally, I note that Mr. Budd's position as to his own intentions varied throughout his closing submissions and was, at times, inconsistent. He testified that Ms. Fleury was the love of his life, he thought she would be his last relationship, and he intended to be in a marriage-like relationship with her. Yet he also relies on *Skawski v. Peters*, 2023 BCSC 2244, to argue that he did not subjectively intend to be in a marriage-like relationship with Ms. Fleury unless she signed the draft cohabitation agreement. While he subsequently resiled from that position, I do not accept that he did not subjectively intend to be in a marriage-like relationship unless Ms. Fleury signed the draft cohabitation agreement. That assertion is inconsistent with the preponderance of Mr. Budd's evidence, his conduct over the course of the relationship, and the objective indicators discussed above. Mr. Budd was fully aware that the cohabitation agreement remained unsigned but did not end the relationship.
- [216] Regardless, *Skawski* is factually distinguishable in multiple respects. Most notably, the parties in *Skawski* were never engaged and Ms. Peters already had serious concerns about the future of the relationship before she and Mr. Skawski started living together: see e.g., para. 112. In those circumstances, the court found that despite moving in together, "the parties' mutual intentions as to their relationship had not moved on to any higher level of commitment" and that Ms. Peters had decided she would only continue in the relationship with a cohabitation agreement in place: paras. 140 and 142. In like fashion, *Bellerose* does not assist, given the Court's conclusion that Mr. Reda "never wanted or intended to be in a marriage-like relationship with Ms. Bellerose" and "made his views clear from the outset": para. 96. The weight of the evidence in the present case is to the opposite effect: Mr. Budd considered Ms. Fleury the "love of his life" and wanted to be in a marriage-like relationship with her even though the cohabitation agreement was not signed.
- [217] At base, Mr. Budd's position is that Ms. Fleury deceived him into thinking she loved him, and that this deceit caused him to stay in the relationship longer than he otherwise would have. If his position is that the relationship was commenced under false pretenses or that Ms. Fleury perpetrated a fraud on him, then the law provides other means of redress. Mr. Budd does not plead a claim in fraud or misrepresentation, and consistent with his pleadings, confirmed in his closing submissions that he does not claim damages for the tort of deceit.

[218] While the parties may have had different reasons animating their respective subjective intentions at different times, I find that they nonetheless each intended to be in a relationship of a lengthy and indeterminate nature with the other. Ms. Fleury's motivations may or may not have been other than Mr. Budd perceived them, but this does not mean that she did not subjectively intend to be in a marriage-like relationship with him.

Conclusion re marriage-like relationship

[219] I am mindful that the determination of whether the parties were in a marriage-like relationship is to be made using a holistic and contextual approach that is grounded in an assessment of all relevant aspects of the relationship, not a checklist of objective factors: Volk at para. 187.

[220] Mr. Budd and Ms. Fleury developed a close personal friendship over three years before becoming intimate partners and transitioning into a romantic relationship in the fall of 2018. Given their close friendship, their romantic relationship quickly became serious in the sense that they both made proclamations of love for each other and expressed their intentions to spend rest of their lives together. Ms. Fleury began spending a significant amount of time at the Fuller Property and travelled extensively with Mr. Budd for the balance of 2018 and into early 2019, and was living at the Fuller Property as of February 2019 at the latest. By August 2020, they were engaged and remained so until Mr. Budd ended the relationship on August 30, 2021.

[221] The preponderance of the evidence, considered within a holistic assessment of the circumstances and assessing the parties' asserted subjective intentions in light of the objective indicators, leads to the conclusion that the parties were living together in a marriage-like relationship for approximately two years and seven months, from February 2019 through August 2021. I therefore find that Ms. Fleury has met the burden of establishing that she and Mr. Budd were "spouses" as defined in s. 3 of the FLA.

Property Division

[222] Spouses are entitled to family property regardless of their respective use or contribution, and on separation, each spouse is presumptively entitled to an undivided half-interest in all family property: FLA, s. 81. The presumption of equal division can only be displaced if the party seeking unequal division can show that equal division would be significantly unfair: FLA, s. 95; Banh v. Chrysler, 2022 BCCA 74 at para. 25. This is a heavy onus that requires "something objectively unjust, unreasonable or unfair in some important or substantial sense": Bennett v. Bennett, 2021 BCSC 1631 at para. 49, citing Jaszczewska v. Kostanski, 2016 BCCA 286 at para. 42.

[223] Ms. Fleury seeks equal division of family property and says that the gain on Mr. Budd's excluded property should be calculated from the commencement of their marriage-like relationship to the date of trial, consistent with ss. 81 and 87 of the FLA. Mr. Budd seeks unequal division under ss. 95(2)(a), (b) and (i), and says that the gain on his excluded property ought to be calculated as of the date of separation, rather than the trial date.

Family Property

[224] Family property consists of all real and personal property owned by one or both spouses at the date of separation, and property acquired after separation that is derived from such property: FLA, s. 84. However, property acquired by a spouse before the relationship began is excluded from family property: FLA, s. 85(a).

[225] Mr. Budd has significant excluded property under s. 85 of the FLA, the value of which exceeded \$150,000,000 as of the trial date. It is common ground that the only family property in issue is the gain on Mr. Budd's excluded property pursuant to s. 84(2)(g) of the FLA.

[226] A spouse's interest in family property under s. 81 of the FLA crystallizes upon separation: *Weaver Estate v. Weaver*, 2022 BCCA 79 at para. 57, leave to appeal to SCC ref'd, [2022] S.C.C.A. No. 135. Contrary to Mr. Budd's submission--which I address in further detail below--this does not mean that it is also valued as of the separation date. Family property is presumptively valued as of the date of trial: FLA, s. 87(b)(ii).

[227] This was recently affirmed in *Mills v. O'Connor*, 2025 BCCA 34 at para. 51, where the Court of Appeal considered family property consisting of a gain on excluded assets under s. 84(2)(g) of the FLA, and noted that it consists of the positive difference between the value of the excluded property at the start of the relationship and its value as of the trial date:

[51] Under s. 85 of the FLA, certain kinds of property, though otherwise qualifying as family property, are excluded from the definition. Property inherited by a spouse is one such category of excluded property: s. 85(1)(b). However, s. 84(2)(g) makes it clear that any increase in the value of excluded property, following the later of the date when the relationship began or when the property was acquired, is to be considered family property and is therefore presumptively divided equally between the spouses. In other words, the FLA clearly distinguishes between the initial value of excluded property and the value of that property as of the date of trial (when, as per s. 87(b)(ii), family property is to be valued for division). Any positive difference owing to an increase in value is presumptively to be shared equally by the spouses.

[italics in original, underlining added]

[228] Thus, while a party's right to an interest in family property is triggered as of the separation date, family property is presumptively valued as of trial: ss. 84, 87(b)(ii); *K.S.P. v. J.T.P.*, 2023 BCSC 1188 at para. 518, aff'd 2025 BCCA 112. Ms. Fleury is therefore presumptively entitled to a monetary one-half interest in the increase in value of Mr. Budd's excluded property, calculated from the start of the marriage-like relationship to the trial date.

Calculation of the gain on Mr. Budd's excluded property

[229] Mr. Budd has considerable personal and corporate wealth. His assets include personal bank and investment accounts at multiple financial institutions in Canada and the United States; personal property including real estate, vehicles, watercraft, artwork, and wine; and personal loans and investments. Mr. Budd is retired; his primary source of income is the interest he earns on his investments.

[230] For the purpose of calculating the gain on Mr. Budd's excluded property, the parties jointly commissioned the following appraisals and expert valuation reports:

- a) a report from Spence Valuation Group dated September 8, 2023, authored by Derek Sanders which addresses Mr. Budd's financial and corporate assets and U.S. real estate holdings (the "Sanders Report");
 - b) appraisals of Mr. Budd's Canadian real estate holdings, namely the Fuller Property consisting of 4584 and 4594 Fuller Road, from All Equity Appraisals, Ltd. dated August 15, 2023, authored by Simon Jolly (the "Jolly Reports");
 - c) a report from Mayberry Fine Art dated September 7, 2023, authored by Shaun Mayberry which appraised Mr. Budd's artwork collection (the "Mayberry Report"); and
 - d) a report from PR Historics dated September 7, 2023, authored by Paul Rossmo which appraised Mr. Budd's vehicles (the "Rossmo Report").
- (a) Excluded Canadian Real Estate, Artwork & Vehicles

[231] The parties agree on the value of the Canadian real estate, artwork, and vehicles as set out in the in the Jolly, Mayberry, and Rossmo Reports. I therefore accept and rely on these reports in calculating the gain on Mr. Budd's excluded assets as described therein. Where the valuation dates differ from the relevant date, I rely on the valuations which are closest to the relevant date: *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 83; *C.M. v. M.N.*, 2022 BCSC 684 [M.N.] at para. 14.

[232] I find that the gain on the Canadian real estate and artwork from commencement of the marriage-like relationship to trial is \$4,847,000, consisting of the following:

- a) Canadian real estate having a gain of \$4,035,000 based on valuations of \$20,375,000 as of December 31, 2018, and \$24,410,000 as of August 15, 2023; plus

- b) artwork having a gain of \$812,000 based on valuations of \$8,681,600 in 2018, and \$9,493,600 in 2023.
- [233] The Rossmo Report provides valuations for two vehicles: a 2005 Porsche Carrera GT (the "Carrera GT") and a 2015 Porsche 918 Spyder (the "Spyder"). Mr. Rossmo opined that the value of the Carrera GT was \$1,004,167 as of October 31, 2018, and \$1,276,000 as of mid-August 2023, resulting in a gain of \$271,833.
- [234] Mr. Rossmo valued the Spyder at \$1,823,050 as of October 31, 2018. However, the Spyder was destroyed in an accident in July 2022. In April 2023, Mr. Budd received insurance proceeds of \$2,295,000, consisting of an insurance payout of \$1,935,000 and salvage value of \$360,000. This results in a gain on the Spyder of \$471,950.
- [235] The gain on Mr. Budd's vehicles therefore totals \$743,783. That said, the Spyder insurance proceeds were deposited into Mr. Budd's RBC Savings Account #344 and are therefore captured in the Sanders Report. The parties agree that to avoid double counting the insurance proceeds, \$1,551,217 must be subtracted from the total gain on Mr. Budd's excluded property. I adopt the same approach, reflected in para. 287 below.
- [236] In February 2023, Mr. Budd purchased a new vehicle. The funds used for this purchase (\$300,000) were withdrawn from Mr. Budd's RBC Dominion Securities account #222 ("The 222 Account"). This withdrawal is reflected as a dissipation in the Sanders Report, but the value of the new vehicle is not accounted for elsewhere and was not appraised by Mr. Rossmo. The parties therefore agree that \$300,000 is to be added to the calculation of family property available for division to account for this purchase. I adopt the same approach, as is reflected in para. 287 below.
- (b) Excluded Financial Assets
- [237] Mr. Budd's excluded financial assets are significant and varied. The Sanders Report values Mr. Budd's financial accounts and other property including personal and corporate bank and investment accounts at multiple financial institutions in Canada and the United States as well as personal loans and investments.
- [238] Mr. Budd also holds shares in two companies, Focus Energy Advisory Corporation ("Focus"), and TAB US Holdings Ltd. and TAB US Holdings LP (collectively "TAB"). Focus is Mr. Budd's investment holding company. It holds bank and investment accounts with RBC, RBC Dominion Securities, and Bank of Nova Scotia; an aircraft; artwork; loans to individuals; and investments in private companies and limited partnerships. TAB holds marketable securities and the California Property.

- [239] The parties instructed Mr. Sanders to value the assets held by Focus and TAB as if they were owned directly by Mr. Budd. Mr. Sanders was not asked, and did not provide, an opinion of the fair market value of Mr. Budd's shareholdings in Focus or TAB. Mr. Sanders was also instructed to include the value of the California Property held by TAB in his analysis, but to exclude personal property and the aircraft held by Focus.
- [240] The Sanders Report deals with 21 different investment and bank accounts in eight different financial institutions: 14 held by Mr. Budd personally, six held by Focus, and one held by TAB. Some of these accounts in turn hold multiple different types of financial assets. The 222 account is illustrative: it holds cash, common shares, fixed income, and mutual funds.
- [241] Mr. Budd has a relatively small number of liabilities related to transactions he entered into with individuals and other corporations. He also gifted approximately \$24,700,000 to four individuals, as of June 30, 2023. The parties agree that the value of those gifts must be added back into the calculation of the gain on Mr. Budd's excluded property. This is reflected in the Sanders Report.
- [242] The Sanders Report did not identify any family property (other than the gain on Mr. Budd's excluded assets calculated therein) acquired between the start of the parties' relationship through trial. The Sanders Report assumed that "new investments for which the funds were derived from excluded property, or gains on excluded property, did not represent new family property acquired during the Relevant Dates" and that "the change in value of these investments, if any, was reflected in [the] overall value of all of the assets as summarized in [their] analysis at each of the Relevant Dates": Sanders Report, para. 15. Neither party takes issue with this finding or approach.
- [243] The Sanders Report values Mr. Budd's excluded property as at four dates: October 31, 2018, which approximates Ms. Fleury's position that the parties' marriage-like relationship commenced as of October 26, 2018; September 30, 2019, which approximates Mr. Budd's position that the parties' marriage-like relationship commenced in September 2019; August 30, 2021, which is the separation date; and June 30, 2023, which is the closest approximation of the trial date. Given my conclusion that the parties' marriage-like relationship started in February 2019, there is no need to refer to the calculations predicated on the parties' marriage-like relationship starting as of September 1, 2019.
- [244] To determine the gain on Mr. Budd's excluded property, the Sanders Report: first, determined the value of Mr. Budd's net excluded assets at each of the relevant dates; second, determined the change in value of Mr. Budd's net excluded assets between the various relevant dates; and then adjusted for losses and gifts which Mr. Sanders understood, from his joint instructions from the parties, were not to be offset against gains. This resulted in him adding back an excluded loss consisting of an unrealized loss of Mr. Budd's investment in XLB/Kognitive of \$120,000 and the value of gifts Mr. Budd made to various individuals totalling \$22,028,000 as of August 30, 2021, and \$24,707,000 as of June 30, 2023.

- [245] The Sanders Report therefore calculates the gain (or loss) on Mr. Budd's excluded financial assets and the California Property as a loss of \$1,690,000 from the start of the relationship to separation; and a gain of \$8,416,000 from the start of the relationship to trial. The difference is largely attributable to an increase in value of the California Property and currency exchange rate fluctuations that increased the value of Mr. Budd's US-dollar assets between the separation date and the trial date.
- [246] Ms. Fleury takes issue with the Sanders Report on two grounds. First, she says that the way in which it treats Mr. Budd's financial accounts is contrary to *Remmem v. Remmem*, 2014 BCSC 1552, because it impermissibly offsets accounts that decreased in value against accounts that increased in value. Ms. Fleury identified the following accounts as having decreased in value: RBC personal chequing account #064; RBC personal savings account #344; RBC personal chequing account #647; RBC business bank account #799; and Bank of Nova Scotia business bank account #117 (collectively, the "Dissipated Accounts"). She says that the withdrawals from the Dissipated Accounts must be added back to properly calculate the gain on Mr. Budd's excluded property.
- [247] Ms. Fleury also initially identified BNS business investment account #7005 as one of the Dissipated Accounts but later acknowledged that the funds withdrawn from that account were reinvested and accounted for elsewhere in the Sanders Report. It is thus common ground that the funds withdrawn from BNS #7005 still exist and are accounted for elsewhere in the Sanders Report. C.H. also testified that the #647 account held funds from Mr. Budd's mother for his deceased sons.
- [248] Second, Ms. Fleury takes issue with Mr. Sanders' treatment of payments received from Mr. Budd's investments in two companies: Cellwand Communications Inc. and Kiwetinohk Energy Corp. (the "RoC Payments"). The Sanders Report treats these payments as return of capital payments, with the value of the investment correspondingly being reduced by the amount of the payment, and Mr. Sanders assumed they were "invested or otherwise used elsewhere".
- [249] Ms. Fleury did not otherwise dispute the Sanders Report, its treatment of Mr. Budd's other personal or corporate assets, or the valuations set out therein.
- [250] At Ms. Fleury's request, Mr. Sanders prepared a second report, dated September 15, 2023 (the "Alternate Report"). Mr. Sanders was instructed to assume that the reduction in value of the Dissipated Accounts was due to usage and that the RoC Payments were also dissipated due to use. The Alternate Report therefore adds the value of the dissipations and RoC Payments back when calculating the gain on Mr. Budd's excluded assets. In doing so, it effectively adopts a "first in, first out" approach and deducts the dissipated funds from Mr. Budd's original exclusion, rather than treating spending during the relationship and post-separation spending as if they reduce the net gain on excluded property.

- [251] Both the Sanders Report and Alternate Report use October 31, 2018, as the valuation date approximating the start of the parties' relationship. Given that there is only a modest difference of approximately three months between October 31, 2018, and February 1, 2019, I find it appropriate to rely on the Sanders Report's October 2018 valuations as that date represents the valuation date closest to the trial date: Namdarpour at para. 83; M.N. at para. 14.
- [252] Adding back the RoC Payments and the funds withdrawn from the Dissipated Accounts to the gains and losses identified in the Sanders Report results in a substantial increase in the gain on Mr. Budd's excluded property, namely a gain of \$5,375,000 from the cohabitation date to the separation date, and a gain of \$15,215,000 from the cohabitation date to trial.
- [253] The relevant valuations are therefore those pertaining to two time periods: October 31, 2018, to August 30, 2021 (start of relationship to separation), and October 31, 2018, to June 30, 2023 (start of relationship to trial). Mr. Sanders' valuation of the gain on Mr. Budd's excluded property for these periods are as follows:

Start of cohabitation to separation

Start of cohabitation to trial

Sanders Report

(\$1,690,000)

\$8,416,000

Alternate Report

\$5,375,000

\$15,215,000

Sanders Report or Alternate Report?

- [254] The parties disagree on which report--the Sanders Report or the Alternate Report--ought to be used to calculate the gain on Mr. Budd's excluded property. Mr. Budd relies on the Sanders Report, while Ms. Fleury says the Alternate Report reflects the correct approach. The factual underpinnings of both reports are not in dispute. The contentious issue is how the Dissipated Accounts, RoC Payments, and spending from the 222 Account ought to be treated. The Alternate Report reflects Ms. Fleury's position on these issues but is otherwise consistent with the Sanders Report.
- [255] A party is not entitled to look to family property to make up the difference where excluded property is lost or dissipated: Asselin v. Roy, 2013 BCSC 1681 at para. 222; Remmem at para. 28; Dragovan v. Kirkvold, 2017 BCSC 1482 at para. 16. In Remmem, Justice Butler (as he then was), explained the principle as follows:

[28] There is one decision in British Columbia considering the application of s. 85 to property that has depreciated since the time it was brought into the relationship. In *Asselin v. Roy*, 2013 BCSC 1681, Harvey J. concluded the value of excluded family property which has depreciated could not be recovered from other family property. In *Asselin* at para. 222, he rejected the claimant's argument that she should receive a credit for an investment made in real property which had depreciated in value at the time of the separation:

In my view, s. 85 doesn't provide for a tracing of otherwise excluded funds beyond the asset which was acquired through the disposition of her inheritance. Just as the claimant is entitled to no consideration for monies expended by her from the inheritance on matters such as travel or other disposables, if there is no equity or insufficient equity in 80 St. Ninian to repay her original investment, she cannot look to other family property to make up the difference.

[emphasis added]

[256] Ms. Fleury says the Sanders Report does exactly what *Remmem* prohibits because it offsets dissipations in some of Mr. Budd's accounts against gains in others. In Ms. Fleury's submission, *Remmem* requires each of Mr. Budd's financial accounts to be treated as separate units of excluded property such that dissipations in one account cannot be offset by gains in others.

[257] I am not persuaded that this is the case. First, the Alternate Report does not look to other family property to offset depreciations in excluded property. All the underlying assets here are encompassed within Mr. Budd's excluded property. The only family property is the gain on Mr. Budd's excluded assets under s. 84(2)(g) of the FLA. The parties acknowledged this in instructing Mr. Sanders to assume that new investments made using excluded funds or gains on excluded property did not represent acquisitions of new family property. The Sanders Report thus does not look to other family property to offset a depreciation in excluded property; it simply calculates the gain on Mr. Budd's excluded property, recognizing that some accounts increased in value over the relevant period while others decreased.

[258] Second, the nature of the property in issue in *Remmem* and in the cases that follow is different than that in issue here. In *Remmem*, the court held that a reduction in value of a commercial fishing boat could not be made up for against particular fishing licences. In *Dragovan*, the *Remmem* principle was applied to a vehicle that had depreciated in value and the party claiming the vehicle as excluded property was not permitted to look to other family property to make up the loss in value of the vehicle: para. 23. Likewise, in *Klebe*, the court did not allow excluded property consisting of settlement funds received by one party and used for family debts and expenses to be traced into family assets: paras. 73-76.

[259] The common thread in each of *Remmem*, *Dragovan*, and *Klebe* is that the party claiming the exclusion was seeking to offset a decrease in their excluded property against separate and discrete family assets. I am not persuaded that this analogy holds when applied to Mr. Budd's financial accounts, including the Dissipated Accounts, because they are of a

different nature and character. Mr. Budd's financial assets are excluded property, not family assets, and consist of a complex web of diversified investments and other holdings. They include a multitude of different types of accounts which he holds both personally and through his corporate entities, TAB and Focus, and through which funds ranging from thousands to millions of dollars were routinely transferred at different times and for different purposes.

[260] The complexity of Mr. Budd's financial assets is illustrated by the fact that he has only limited knowledge of his finances and relies on C.H. and his professional advisors to manage them on his behalf. C.H. effects the transfer of funds between Mr. Budd's various accounts, doing so as and when needed to meet his fixed, recurring, and unanticipated expenditures and to ensure sufficient funds to cover spending. The pattern of transactions described by C.H. and substantiated in the banking records demonstrates this and illustrates how a decrease or dissipation of funds from one account was often accompanied by a corresponding increase in another account. By way of example, in December 2020, the balance of his RBC personal savings account #344 was reduced by approximately \$2,000,000. Those funds were not "spent"; they were used to purchase a GIC and obtain a better rate of return.

[261] In these circumstances, isolating only those accounts that decreased in value from the aggregate total of Mr. Budd's financial holdings, as the Alternate Report does, would not fairly or accurately reflect the nature, extent, and use of Mr. Budd's financial assets and investments. Indeed, Mr. Sanders highlighted the difficulties in doing so in the Alternate Report:

Due to the nature of, and the number of transactions in, the accounts in which these funds were held/received and the challenges associated with tracing these funds through Mr. Budd's accounts, we were unable to verify whether these funds were reinvested in other assets which were included in the excluded assets set out in the [Sanders Report]. For the purpose of this addendum we have been asked by Mr. MacLean to assume that these funds were dissipated due to usage.

[262] Considering each account individually would require the Court to engage in the very exercise that Mr. Sanders was unable to do, namely to ascertain whether the funds withdrawn from any given account were actually dissipated or instead transferred to other accounts, i.e. determine whether a decrease in any given account occurred because of a change in the mix of investments held across the various financial accounts in issue.

[263] Ms. Fleury's position also fails to account for the fact that the composition of Mr. Budd's various financial assets changed over time. The number and type of accounts and institutions at which he held them was different as of October 2018, August 2021, and September 2023. New accounts were opened, and existing accounts were closed. The parties instructed Mr. Sanders to value the pool of monetary assets as at various dates, without regard to changes in the composition of the assets or transactions made between

various accounts.

- [264] This is consistent with the fact that the FLA does not contemplate a forensic accounting of expenditures during the relationship: *Banh* at para. 51. Nor, in my view, does *Remmem* require a forensic accounting of each transaction in each of Mr. Budd's accounts to determine which transactions were in fact dissipations due to usage and which were transfers to other accounts.
- [265] Given the way Mr. Budd's financial assets were structured and managed, and the way the parties instructed Mr. Sanders to approach his valuation of those assets, I find it appropriate to treat his financial accounts as an aggregate pool of funds comprising a class of property for the purpose of calculating the gain on excluded property. This was the approach Mr. Sanders concluded was appropriate and I find it reflects the practical reality of the way these funds were treated by Mr. Budd, C.H., and Mr. Budd's financial advisors. The approach used in the Sanders Report is consistent with the law and is reflective of the actual character and use of the financial accounts in issue.
- [266] Moreover, even if I were inclined to adopt the approach reflected in the Alternate Report, I find the weight that can be given to it is significantly limited because one of the fundamental assumptions upon which it is predicated--that all spending from the Dissipated Accounts was on account of usage--was not proven on the evidence. Factual assumptions are not evidence of the facts, which must be proved by other admissible evidence: *Mazur v. Lucas*, 2010 BCCA 473 at paras. 37, 40; *A.D.J. v. F.J.*, 2022 BCSC 600 at para. 160.
- [267] The evidentiary record before me does not support the assumption that all funds spent from the Dissipated Account were dissipated on account of use. Two examples are illustrative. First, C.H.'s unchallenged evidence was that the RoC Payments were deposited into Mr. Budd's personal and Focus accounts, not dissipated due to use. Second, C.H. testified that what appeared to be a \$2,000,000 dissipation from one account was in fact transferred to RBC Dominion Securities to purchase a GIC. In neither instance were the funds dissipated on account of use as the Alternate Report assumes.
- [268] Using the Sanders Report also means that no further adjustment is required for the BNS #7005 account because both the reduction of value in BNS #7005 and the corresponding gain in Mr. Budd's restaurant investments are accounted for in the Sanders Report. The Sanders Report also appropriately addresses the RoC Payments, characterizing them as return-on-capital payments that reduce the original investments by the same amount as the payments.

The 222 Account

- [269] Ms. Fleury also takes issue with the dissipation of funds from the 222 Account. The 222 Account holds various types of assets: cash, fixed income, common shares, and mutual funds. Withdrawals from the 222 Account were not addressed in the Alternate Report.
- [270] From March 2021 through March 2023, Mr. Budd transferred approximately \$3,105,000 out of the 222 Account into other accounts. The parties agree that \$925,000 of these funds is reflected in other assets held by Mr. Budd or through a reduction in debt on account of loan repayments. This leaves \$2,180,000 that was withdrawn from the 222 Account but not reflected in other accounts or property.
- [271] The parties disagree on how the \$2,180,000 ought to be treated for the purpose of determining the gain in value of the 222 Account under s. 84(2)(g) of the FLA. Ms. Fleury initially submitted that the Court should trace the dissipations solely into Mr. Budd's exclusion by deducting \$2,180,000 from the balance in the account as at the cohabitation start date. However, she resiled from this position following the release of Mills. In supplemental submissions, Ms. Fleury now asserts that the appropriate approach to the post-separation dissipation in the 222 Account is to "trace" the dissipation on a pro rata basis into both Mr. Budd's excluded property portion of the account and to the gain in value.
- [272] In Mills, the Court of Appeal addressed the issue of tracing excluded property into substitute family property. The issue was whether and to what extent the value attaching to an inherited property could be traced into substitute family assets after multiple successive transactions. The Court defined tracing as an "analytical exercise whereby a court tracks the value that attaches to a proprietary interest through successive transactions into substitute assets" (emphasis added): para. 79.
- [273] The present facts engage a different analysis. The property in issue here is undisputedly Mr. Budd's excluded property under s. 85(1)(a) of the FLA. The only family property is the gain on Mr. Budd's excluded property under s. 84(2)(g). A spouse's interest in the increase in value of the other spouse's excluded property under s. 84(2)(g) is monetary, not proprietary: *Liapis v. Keshow*, 2021 BCSC 502 at para. 181.
- [274] The task at hand is thus to calculate the gain on that excluded property, not trace the exclusion into subsequently acquired family assets in which Ms. Fleury has a proprietary interest. Ms. Fleury's interest in the gain on Mr. Budd's excluded assets is monetary in nature. Accordingly, I am not persuaded that the concept of tracing excluded property into substitute family property in which both spouses have proprietary interests, as was the case in Mills, has application here. There is no substitute family property in which Ms. Fleury has a proprietary interest to be able to "trace" the dissipation into. Nor is there anything in Mills which suggests that the concept of tracing as described therein applies to the calculation of the gain on excluded property under s. 84(2)(g) of the FLA, particularly when dealing with property which remains wholly excluded and in which the other spouse has only a monetary interest.

[275] In the result, I am not satisfied that there is any basis to depart from the approach set out in the Sanders Report, which calculates the gain (or loss) on the 222 Account from the cohabitation start date to the trial date. I therefore accept and rely on the calculations in the Sanders Report for the purpose of calculating the gain on the 222 Account.

Valuation date for financial assets

[276] As is evident in the Sanders Report, the date on which Mr. Budd's excluded property is valued has a significant impact on the valuation of family property. Mr. Budd asserts that his financial assets should be valued at the separation date rather than the trial date--which would result in there being no family property per the Sanders Report--on two grounds, namely because:

- a) The value of his excluded property "crystallized" on separation and should therefore also be valued at the separation date instead of the trial date; and
- b) His bank and other financial accounts are all "ongoing use" accounts and should therefore be valued at separation rather than at trial.

[277] I do not find either of these submissions to be persuasive.

[278] First, Mr. Budd's attempt to value his financial assets at separation ignores the clear direction in the FLA, recently affirmed by the Court of Appeal in Mills, that absent significant unfairness, family property is presumptively valued at the date of trial: FLA s. 87(b)(ii); Mills at para. 51; Soltani v. Fadaee Estate, 2025 BCSC 495 at para. 218. Family property crystallizes upon separation, but its value is determined as of the date of trial: Chander v. Janif, 2024 BCSC 1505 at para. 8. While Mr. Budd relies on Zellweger v. Zellweger, 2018 BCSC 1227, that decision speaks only to entitlement: at para. 51.

[279] Second, Mr. Budd's reliance on Liapis to assert that his financial accounts are "ongoing use" accounts that should therefore be valued at separation instead of trial is misplaced. Liapis does not stand for the proposition that financial accounts are valued at the date of separation irrespective of their nature or use. Liapis recognizes that family property is presumptively valued at trial, but contemplates bank accounts that are "the subject of daily use" (emphasis added) being valued at separation: para. 223.

[280] The exception contemplated in the jurisprudence is thus a limited one that, for practical reasons, permits accounts that are used on a daily basis to be valued at separation rather than at trial: Liapis, supra; see also Asselin at para. 171. Brown v. Brown, 2016 BCSC 1037, is to the same effect, with the Court noting that only accounts that are "used daily" should be valued at separation. Other types of accounts, including RRSPs and investment accounts, should be valued at trial:

[65] The Court has discretion to order a different valuation date. For example, the Court has held that the value of bank accounts that are used daily should be determined as of the date of separation. Conversely, long-term investment accounts, including RRSPs, should be valued as of the date of trial subject to an accounting for contributions and withdrawals post-separation: *Asselin v. Roy*, 2013 BCSC 1681 at paras. 171-72. There may be other reasons for departing from the normal rules regarding valuation dates, including significant unfairness.

[Emphasis added.]

[281] The "daily use" exception contemplated in *Liapis*, *Asselin*, and *Brown* arises for practical reasons where an account is used on a daily basis. Contrary to Mr. Budd's submission, the jurisprudence does not recognize the concept of "ongoing use", nor does the exception apply simply because the balance in a bank account fluctuates. If that were the case, the exception would become the rule because it is difficult to conceive of financial accounts in which the balance does not fluctuate depending on the time frame in issue.

[282] Many of Mr. Budd's accounts are, on their face, the type of accounts that *Asselin* and *Brown* expressly hold are not daily use accounts, namely investment accounts and RRSPs. The remaining accounts were also for the most part not "daily use" accounts as that concept is articulated in the jurisprudence. Many of Mr. Budd's accounts were used only quarterly or intermittently to make larger payments or to transfer funds into other accounts. C.H. specifically testified that BNS #7005 and BNS #799 were not operating accounts and that BNS #7005 was not a spending or active account. RBC #344 was used for occasional larger payments and transfers, RBC #799 was used for investment purposes and to pay Focus's quarterly taxes, and BNS #117 was a savings account in which a "bulk of money" was kept to earn higher interest and have funds available to transfer to other accounts when needed.

[283] Ongoing, intermittent use of an account to hold funds or have them available to transfer to other accounts is not the type of daily use described in *Liapis*, *Asselin*, or *Brown*. There is also no basis whatsoever to treat the passively held minority investments, loans receivable, and real estate assets included in the *Sanders* Report as "daily use" bank accounts.

[284] Further, the evidence only addressed a small number of the many financial accounts covered in the *Sanders* Report and I am not prepared to treat all the accounts as "daily use" accounts absent an evidentiary basis for doing so. While Mr. Budd and Focus each have chequing accounts that could be characterized as the type of "daily use" account contemplated in *Liapis*, Mr. Budd did not ask the Court to consider those accounts separately from the rest, nor is the evidentiary record sufficient to engage in such an exercise. Mr. Budd's all-or-nothing approach fails to account for the variety of financial accounts and other assets that comprise the excluded property in the *Sanders* Report. In the absence of assistance from the parties, it is not for the Court to attempt to parse through the *Sanders* Report and the voluminous supporting financial records to determine which of the accounts, if any, could be characterized as "daily use" accounts.

[285] In the result, I am not persuaded that the "daily use" exception applies to Mr. Budd's excluded financial accounts detailed in the Sanders Report so as to permit them to be valued at separation rather than at trial.

Conclusion on calculation of gain on Mr. Budd's excluded property

[286] In light of my conclusions as set out above, I find the gain on Mr. Budd's excluded property-- and thus the family property available for division under s. 84(2)(g) of the FLA--is \$13,263,000, consisting of the following:

- a) \$4,035,000 on account of the gain on Mr. Budd's Canadian real estate holdings;
- b) \$812,000 on account of the gain on Mr. Budd's artwork; and
- c) \$8,416,000 on account of the gain on Mr. Budd's financial assets, including the 222 Account and U.S. real estate holdings, as set out in the Sanders Report.

[287] However, as noted above, the parties agree that certain adjustments are required. Based on the Sanders Report and using the approach adopted by the parties in their submissions, the net family property available for division is:

Property

Value at Relationship Start Date

(October 2018)

Value at Trial

(June 2023)

Family Property Subject to Division (Increase in value)

Canadian Real Estate

\$20,375,000

\$24,410,000

\$4,035,000

Artwork Collection

\$8,681,600

\$9,493,600

\$812,000

Gains in Financial and Corporate Assets (Sanders Report)

\$8,416,000

Deduction to account for inclusion of \$2,295,000 Spyder insurance payout in Sanders Report

\$2,827,217

\$1,276,000

-\$1,551,217

Addition to account for vehicle purchased in February 2023 using funds from 222 Account.

\$300,000

Total Family Property to be Divided

\$12,011,783

[288] Applying the presumptive equal division of family property prescribed by s. 81 of the FLA, rounded to the nearest dollar, Ms. Fleury's presumptive half-interest in the family property valued at the trial date is \$6,005,892.

Would equal division of family property be significantly unfair to Mr. Budd?

[289] When considering a claim for unequal division of family property, the court should proceed by first making a notional equal division of property and then determining whether such an equal division would be significantly unfair, given the factors in s. 95(2) and, where applicable, s. 95(3) of the FLA: *Healey v. Healey*, 2024 BCCA 68 at para. 69, citing *Remmem* at para. 43; *Polard v. Polard*, 2017 BCSC 1963 at para. 19.

[290] Having determined the extent of family property and Ms. Fleury's interest therein based on the presumption of equal division, I now turn to the question of whether equal division would be significantly unfair.

[291] The framework for property division established in Part 5 of the FLA starts from the presumptions that family property will be divided equally and valued at the date of trial: FLA, ss. 81 and 87. The purpose of these presumptions is to create certainty and stability in family law proceedings to reduce the need for, and complexity of, litigation and avoid free-ranging inquiries into the conduct of the parties: *He v. Guo*, 2022 BCCA 355 at para. 36; *Chander* at para. 21.

[292] Section 95 of the FLA allows the court to order unequal division of family property, but only if satisfied that it would be "significantly unfair" to apply the presumptions in ss. 81 and 87: FLA, s. 95; *Banh* at para. 25; *Sperring v. Shutiak*, 2023 BCCA 54 at para. 110. This is a high threshold that requires something "objectively unjust, unreasonable or unfair": *Singh v. Singh*, 2020 BCCA 21 at para. 134.

[293] There must be persuasive reasons for an unequal division; the unfairness must be compelling or meaningful having regard to the factors in s. 95(2): *Jean Louis v. Jean Louis*, 2020 BCCA 220 at para. 44; *Jaczewska*, at para. 41. The potential unfairness arising from equal division of family property is weighed against the objectives of establishing a certain

and predictable regime for the division of family property: Sperring at para. 112; Powell v. Stalker, 2024 BCSC 1496 at para. 68. Consequently, some unfairness is tolerated to further these important public policy objectives.

- [294] Given Mr. Budd's significant wealth, it is important to bear in mind that the FLA's excluded property regime starts from the point of recognizing significant exclusions in the concept of what constitutes "family property", thereby affording some protection to the spouse with the larger contribution in shorter relationships. Only the gain on excluded assets over the course of the relationship is family property and consequently, the value of the family property is inherently proportionate to the length of the relationship: see e.g. Chander at para. 28. By consequence, the potential gain is likely to be smaller in relationships of shorter duration.
- [295] Where the high bar of significant unfairness is met, the FLA provides two remedies: the court can vary the date for division of family property under s. 87 or order an unequal division of family property under s. 95: Banh at para. 26. Mr. Budd seeks unequal division under both ss. 87 and 95 of the FLA.
- [296] Mr. Budd does not suggest what reapportionment of family property would be fair as between the parties. He simply says that Ms. Fleury is not entitled to anything beyond the \$860,000 she has already received on account of an April 2023 interim distribution of \$800,000 and a \$60,000 loan repayment Mr. Budd made on her behalf. Valuing the family property from the start of the relationship to trial, this would affect an approximate division of family property of 7% to Ms. Fleury and 93% to Mr. Budd, in addition to him retaining his excluded property in full.

Has Mr. Budd established that equal division would be significantly unfair in light of the factors set out in s. 95(2) of the FLA?

- [297] The factors that the Court can consider in determining whether equal division would be significantly unfair are set out in s. 95(2) of the FLA. Mr. Budd says the following factors warrant unequal division:
- a) the duration of the relationship under s. 95(2)(a);
 - b) the terms of an agreement between the spouses under s. 95(2)(b);
 - c) whether a spouse caused a significant increase in the value of family property beyond market trends under s. 95(2)(f); and
 - d) the relative contributions of the parties under s. 95(2)(i), which permits the court to consider any other factor that may lead to significant unfairness.
- [298] Mr. Budd also attempted to argue in his closing submissions that he had unrealized tax liabilities which engage s. 95(2)(h) of the FLA. The record does not contain the evidence necessary to enable the Court to consider this submission and I therefore decline to do so.

Section 95(2)(a): Duration of the relationship

- [299] The parties were in a marriage-like relationship from February 2019 to August 2021, a period of two years and seven months, which I accept is a relationship of relatively short duration. However, it was not as short as that in *Davie v. De Mark*, 2017 BCSC 872, where the parties were spouses within the meaning of the FLA for only one year, and had they not married, the length of the relationship would not have qualified for the application of the FLA and presumption in favour of equal division: paras. 157 and 172.
- [300] I am also mindful of and agree with Justice Lamb's comment in *Baillargeon v. Adams*, 2024 BCSC 711 at para. 116, that decisions predating *Jaszczewska and Singh* ought to be treated with caution as they would have been made without the benefit of the Court of Appeal's guidance on how to interpret and apply s. 95.
- [301] While the duration of the relationship is a relevant factor under s. 95(2)(a), the mere fact of a relatively short relationship alone is not sufficient to warrant reapportionment: *Banh* at para. 62; *Chander* at para. 25.

Section 95(2)(b): Terms of any agreement between the spouses

- [302] Section 95(2)(b) of the FLA provides that the terms of an agreement between the spouses are a relevant consideration in determining whether equal division would be significantly unfair. Agreements under this section can be written or oral: *P.N.K. v. C.L.*, 2013 BCSC 1856 at para. 86.
- [303] Despite extensive efforts to negotiate a cohabitation agreement, which spanned approximately a year and a half and saw multiple drafts negotiated and exchanged between the parties and their counsel, no agreement was ever reached. Ms. Fleury did sign two "cohabitation letters" in 2019 as discussed above, but Mr. Budd does not take the position that those letters constitute agreements for the purpose of s. 95(2)(b). He relies on them as evidence of early discussions between the parties that a cohabitation agreement would be required.
- [304] The first draft of a written cohabitation agreement was provided to Ms. Fleury in February 2020. It contained a recital stating that the parties started cohabitating "in or about December 2019". Mr. Budd testified that this was the date he felt they had agreed on and described it as "a target we had had for some time". He did not testify that it represented the actual date he and Ms. Fleury began living together.
- [305] Ms. Fleury reviewed the first draft and on August 11, 2020, at Mr. Budd's request, sent him an email confirming that she had read and understood it, and would sign it once she'd met with her counsel to go over it and make final changes. Later that same day, Mr. Budd proposed to Ms. Fleury.

[306] The issue of the cohabitation agreement arose again in November 2020. The parties were in the midst of an argument and sent each other text and email messages discussing the state of their relationship and the fact that the cohabitation agreement remained unsigned. Ms. Fleury had been discussing the agreement with her lawyer and in an email sent November 1, 2020, told Mr. Budd that she had not signed it because the cohabitation date was wrong:

Also, the reason the document remains unsigned is because the date in which you stated we've been cohabitating is untrue. You and I have spent seven days a week together since October 2018. You expressed wanting to move the date back to cover yourself financially. You said "I would give you more, I would take care of you but I want to do that on my own, I don't want to have to by law, I want it to be my choice. But I would take care of you, especially if we broke up because of me".

I said "let's just have the documents say the correct date, let's agree on an amount and I will sign it." But you won't. I need to make sure that I'm okay and safe in all of this too. The agreement isn't just about protecting you.

You have also stated that we moved in quicker than you wanted. That's also untrue. You told me couldn't spend a night away from me and that you didn't want to. You always wanted me with you, same went for me Tom. You say things when they are convenient for you, like you did me some huge favour by us being together the way that we are. That was for both of us, it wasn't one sided. You just wanted the documents to say otherwise.

[emphasis added]

[307] In response, Mr. Budd sent Ms. Fleury a text message purporting to end the relationship. However, the parties did not break up and the relationship continued despite the cohabitation agreement remaining unsigned. I reject Mr. Budd's evidence that the reason he did not end the relationship at this point was that Ms. Fleury told him she would sign the draft cohabitation agreement. He knew the agreement remained unsigned for many months thereafter but did not end the relationship or ask Ms. Fleury to move out. Mr. Budd had legal counsel throughout the relevant time and was well aware of the consequences of remaining in the relationship and of the potential risk that it entailed.

[308] Ms. Fleury received a further draft of the cohabitation agreement in January 2021, which changed the cohabitation date to "in or about September 2019". In exchange for abandoning any claim for spousal support, Ms. Fleury was to receive a lump sum payment depending on how long the relationship lasted. Clause 5(d) of the draft cohabitation agreement also provided that Ms. Fleury would receive \$25,000 and reasonable costs for moving her belongings in Kelowna and any cost of shipping her belongings, including her vehicle, from California.

[309] On March 10, 2021, Mr. Budd faxed a marked-up copy of the draft agreement to his counsel. It was unsigned and contained various handwritten comments in different, unidentified, forms of writing.

- [310] A third draft of the cohabitation agreement was prepared in early May 2021 (the "May 2021 Draft"). It retained the September 2019 cohabitation date but increased the compensation payable to Ms. Fleury if the relationship ended before September 2021 under clause 5(d) from \$25,000 to \$45,000. Mr. Budd asserts that this draft reflects an oral agreement he and Ms. Fleury made in March 2021.
- [311] However, on June 10, 2021, Mr. Budd faxed his counsel a single page of the May 2021 Draft containing handwritten changes to clause 5(d), which deleted the \$45,000 payable to Ms. Fleury. These changes were reflected in the fourth draft of the agreement, which Mr. Budd's counsel sent to him that same month (the "June 2021 Draft"). The June 2021 Draft reflected the changes Mr. Budd requested on June 10, 2021, namely the removal of the \$45,000 payment from clause 5(d). Mr. Budd testified that he made the change because he did not think the \$45,000 was right, it wasn't supposed to be there, and he thought it was a typo.
- [312] Ms. Fleury was provided with the June 2021 Draft but did not sign it, despite Mr. Budd's repeated requests. As the conflict in their relationship was coming to a head, on August 22, 2021, Mr. Budd obtained another copy of the June 2021 Draft from his counsel. On August 29, 2021, he again gave it to Ms. Fleury and implored her to sign it.
- [313] I accept that Mr. Budd made it clear to Ms. Fleury that he wanted a cohabitation agreement, and that in return Ms. Fleury indicated to him on multiple instances that she was willing to sign one. However, they could not agree on the terms, with the cohabitation date being a particularly contentious point. Whether or not Ms. Fleury expressly told Mr. Budd that she did not agree with the cohabitation date, on August 29, 2021 or otherwise, I find that she made it clear in her November 1, 2020, email and in subsequent discussions with Mr. Budd that in her view, the parties had been living together since October 2018 and she wanted the cohabitation agreement to reflect that.
- [314] The parties never did agree on the cohabitation date to be used in the cohabitation agreement and Ms. Fleury never signed it. On August 30, 2021--less than 48 hours before the two-year threshold under s. 3 of the FLA would have been crossed based on the September 1, 2019, cohabitation date contained in the June 2021 Draft--Mr. Budd ended the relationship and had Ms. Fleury removed from the Fuller Property.

Can Mr. Budd rely on an oral agreement that is not pleaded?

- [315] In the absence of a written cohabitation agreement, Mr. Budd asserted for the first time in closing argument that "by March 10, 2021" he and Ms. Fleury had entered into an oral agreement on the terms set out in the May 2021 Draft. Ms. Fleury denies entering into any oral agreement, but regardless, says that Mr. Budd cannot assert an oral agreement because no such agreement is pleaded in his response to family claim or counterclaim.
- [316] The oral agreement Mr. Budd alleged in his closing argument is not alleged in his pleadings. Rather, Mr. Budd's counterclaim pleads that terms were negotiated, but the agreement was not signed:

Between September 2019 and August 2021, the parties, both having the assistance of their counsel, negotiated terms of a cohabitation agreement. The cohabitation agreement was never signed by the parties before the relationship ended.

- [317] Mr. Budd says that this pleading can be interpreted as alluding to an oral agreement under s. 92 of the FLA for the purpose of seeking unequal division under s. 95(2)(b) of the FLA. I disagree. Mr. Budd pleads that the cohabitation agreement was not signed. If he intended to assert that the parties nonetheless orally agreed to the terms of the May 2021 Draft sometime prior to March 10, 2021, he ought to have pleaded those material facts. He did not.
- [318] Pleadings are foundational. They guide the litigation process and define the issues of fact and law to be determined by the court which in turn ensures the litigation process is fair and promotes justice between the parties: *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362 at paras. 21-23. None of the jurisprudence that Mr. Budd cites permits him to rely on an agreement not pleaded.
- [319] In *Brown v. Brown*, 2016 BCSC 1037, Ms. Brown was granted leave to amend to plead an agreement where doing so was necessary to reflect the evidence at trial. Importantly, Dr. Brown was made aware of the alleged agreement months prior to trial and his examination for discovery was postponed so that he could be questioned about it. In those circumstances, the Court concluded that it was just and convenient to permit Ms. Brown to amend at trial: para. 79. None of the animating factors in *Brown* are present here. Mr. Budd did not seek leave to amend, Ms. Fleury did not have notice of the alleged oral agreement prior to trial, and the issue was not canvassed on discovery or in evidence at trial.
- [320] The circumstances in *Storey v. Terry*, 2019 BCSC 674, *aff'd* 2020 BCCA 30, are also distinguishable from the case at bar. *Storey* involved a four-day summary trial application in which a self-represented party sought to rely on an oral agreement that was not expressly pleaded. In the interest of ensuring a complete and final adjudication on the merits, the Court adopted "a more relaxed approach to pleadings than may otherwise be appropriate" at para. 8. I am not persuaded that a relaxed approach is appropriate here, where the parties engaged in a lengthy, hard-fought, 55-day trial during which both were represented by experienced counsel.
- [321] Proper pleadings that set out the material facts pertaining to the formation and material terms of the alleged oral agreement are required for the Court to fairly and justly decide the issue of whether the agreement was entered and on what terms. By asserting an oral agreement for the first time in closing argument, Mr. Budd has deprived Ms. Fleury of the opportunity to canvass this issue on discovery and test his evidence--as limited as it was--by way of discovery and cross-examination at trial. In these circumstances, proceeding in the absence of proper pleadings would, in my view, be procedurally unfair and contrary to the interests of justice.

[322] Accordingly, I find that Mr. Budd's failure to plead the oral agreement he now alleges precludes him from asserting it for the purpose of establishing substantial unfairness under s. 95(2)(b) of the FLA.

Is an oral agreement established on the evidence?

[323] If I am incorrect in concluding that Mr. Budd cannot rely on an oral agreement not asserted in his pleadings, I nonetheless find that the alleged agreement is not proven on the evidence.

[324] The party relying on a contract must satisfy the court that its existence is more probable than not. If the court is unable to determine which party to believe, the party seeking to rely on the contract will not have met its burden of proof: *Qi v. Qin*, 2024 BCSC 1830 at para. 115; *Go Transport Ltd. v. Moore*, 2021 BCSC 1099 at para. 16.

[325] The requirements of a binding contract are: (a) an intention to contract; (b) the essential terms are agreed to by the parties; and (c) the essential terms are sufficiently certain: *Oswald v. Start Up SRL*, 2021 BCCA 352 [Oswald BCCA] at para. 34. The test is objective, namely whether parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract: *Oswald BCCA* at para. 38, citing *Berthin v. Berthin*, 2016 BCCA 104, at para. 46; *Oswald v. Start Up SRL*, 2020 BCSC 1730 at para. 123.

[326] The principles that apply when an oral agreement is asserted in the present context are canvassed in *Voitchovsky v. Gibson*, 2022 BCCA 428 at paras. 32-34. The Court of Appeal noted the importance of looking at not only the words used, but at whether the parties' conduct is consistent with the oral agreement. The question is not what the parties subjectively intended, but whether their conduct was such that a reasonable person would conclude that they intended to be bound by the agreement. The material question asks what intention is objectively manifest in the parties' conduct: *Voitchovsky* at para. 34.

[327] Where there is no written agreement, the words and actions of the parties are more important: *M.F.W. v. M.A.H.*, 2019 BCSC 588 at para. 192; rev'd in part 2020 BCCA 284. The credibility of witnesses is also particularly important because of the difficulty in determining whether the parties made an enforceable bargain when they testify to different versions of events: *M.F.W.* at para. 192.

[328] Mr. Budd's articulation of the date the oral agreement was allegedly made and its terms varied over the course of his closing submissions. He eventually took the position that based on conversations he and Ms. Fleury had over the course of the preceding months, by March 10, 2021, they orally agreed to the terms reflected in the May 2021 Draft. However, Mr. Budd then changed his position to say that the only material terms that were agreed to were: (a) a cohabitation start date of September 1, 2019; and (b) that in the event the relationship ended before September 2021, Ms. Fleury would receive \$45,000 for return of her property from California and lump sum spousal support of \$48,000.

- [329] Ms. Fleury denies making an oral agreement on the terms alleged by Mr. Budd or at all. She maintains that while she was prepared to sign a cohabitation agreement, she did not do so or agree with the various drafts because, among other things, the September 1, 2019, cohabitation start date was wrong. She says that they were still discussing the cohabitation agreement long after March 10, 2021.
- [330] Mr. Budd accepts that the parties never expressly agreed on the terms he alleges, but says that an oral agreement nonetheless arises from the fact that the May 2021 Draft incorporated the changes Ms. Fleury requested on the prior marked-up version, and the fact that she did not request any further changes. Mr. Budd's position seems to be that an oral agreement arises by conduct because Ms. Fleury never told him that she did not agree with the September 1, 2019, cohabitation date and never said she would not sign the draft cohabitation agreement.
- [331] Conduct alone is not sufficient to establish an oral agreement for the purpose of s. 95(2)(b): Powell at para. 110. I am not persuaded that Ms. Fleury's failure to make or request further changes to the draft agreement, particularly without evidence of any express discussion about this with Mr. Budd, establishes that they entered into an oral agreement on the terms of the May 2021 Draft.
- [332] Regardless, Mr. Budd's conduct in unilaterally changing the material terms of the May 2021 Draft after he says the oral agreement was made belies a meeting of the minds on the material terms he alleges. Specifically, in June 2021, Mr. Budd unilaterally deleted the \$45,000 payment to Ms. Fleury from clause 5(d) of the May 2021 draft. Mr. Budd's attempt to characterize this change as "minor" or the result of a drug-induced mistaken understanding is not persuasive.
- [333] Mr. Budd's explanation as to why he deleted the \$45,000 payment also belies any meeting of the minds: he testified that he scratched it out because he thought "there was a typo". If the \$45,000 was not the correct amount--or no amount was agreed to as his edits suggest--then there cannot have been a meeting of the minds on clause 5(d) as it existed in the May 2021 Draft because that version included the \$45,000 payment. No matter the reason, there cannot have been a meeting of the minds sufficient to give rise to an oral contract if Mr. Budd continued to make changes to a material term after he says the agreement was reached.
- [334] A common thread in cases where oral agreements are proven and considered under s. 95(2)(b) of the FLA is that the agreements were supported in the parties' evidence and corroborated by other independent evidence: see e.g. P.N.K. at para. 87. In Brown, the Court found that Ms. Brown's evidence was "clear and cogent with respect to her desire to exclude the Ross Street property from the joint property regime under the Family Relations Act" and consequently that the agreement was "certain and enforceable": paras. 76 and 79.

- [335] Even on the most generous of characterizations, the evidence said to give rise to the alleged oral agreement in this case cannot be described as clear or cogent. Neither party testified to any express oral agreement having been made and even if I were to accept Mr. Budd's evidence, the terms are not sufficiently certain to be binding. In my view, the present case is factually analogous to *S.V.A. v. D.M.D.*, 2023 BCSC 1258, and *Liapis*, where the court found that the agreements alleged were not established on the evidence.
- [336] Neither Mr. Budd or Ms. Fleury testified to an express conversation in which the agreement was made. To the contrary, they continued to negotiate the terms of the cohabitation agreement after March 10, 2021, and further drafts were also prepared by counsel after that date. Mr. Budd could not articulate a precise date when the agreement was allegedly reached, nor does the totality of the evidence evince a meeting of the minds sufficient to give rise to an oral agreement.
- [337] The onus is on Mr. Budd to prove the existence of the agreement. Applying the principles as set out above, I find that the evidence falls short and is incapable of being interpreted as evidence of an oral agreement as alleged. I am not satisfied that the parties' words or conduct was such that an objective reasonable bystander would conclude that they intended to contract, or on what terms. I am therefore not persuaded that Mr. Budd and Ms. Fleury entered into an oral agreement "by March 10, 2021", on the terms of the May 2021 Draft or otherwise.
- [338] I have also considered the Court of Appeal's comment in *Sperring* that absent an express agreement, a "working arrangement" can also be considered: para. 114. *Sperring* cites *Doell v. Prentice*, 2018 BCSC 1115, in support of this proposition. However, a careful consideration of *Doell* shows that the "working arrangement" in that case was an agreement that was established on the evidence and corroborated by contemporaneous communications with third parties: *Doell* at paras. 65-66 and 71. *Powell* at para. 109 and *Chander* at paras. 61-63 interpret *Doell* in the same manner. Unlike the present case, the "working arrangement" in *Doell* did not involve a draft agreement still to be worked out or subject to further negotiation.
- [339] The "working arrangement" in *Sperring* was in effect an agreement established on the evidence. I do not interpret *Sperring* as suggesting that a "working arrangement" falling short of an agreement can be considered under s. 95(2)(b). Adopting such an approach would also be contrary to the express wording of s. 95(2)(b), which provides that the court may consider "the terms of any agreement between the spouses" (emphasis added).
- [340] In the result, Mr. Budd has not established that he and Ms. Fleury entered into an oral agreement--on the terms of the May 2021 Draft or at all--for the purpose of s. 95(2)(b). Consequently, I am not persuaded that it would be significantly unfair to divide family property equally because of the terms of any such agreement.

Section 95(2)(f): Spouse-caused decrease or increase in value of family property beyond market trends

- [341] Section 95(2)(f) of the FLA provides that the Court may consider whether a spouse has caused an increase or decrease in value "beyond market trends" in determining whether equal division would be significantly unfair.
- [342] Mr. Budd relies on *A.J.E. v. T.B.W.*, 2017 BCSC 1657, and *Charan v. Charan*, 2018 BCSC 1537, to argue that a significant post-separation increase in value due to market forces coupled with a lack of contribution by one spouse gives rise to significant unfairness and thus warrants using the separation date rather than the presumptive trial date to value the gain on his excluded assets.
- [343] Post-separation increases in value of family property due to market trends do not, standing alone, support a finding of significant unfairness: *Moore v. Cosby*, 2025 BCSC 1226 [Moore] at para. 108; *Popein v. Popein*, 2024 BCSC 1159 at para. 150. In *Popein*, the Court rejected the proposition that "market-driven" increases in value of real property can give rise to substantial unfairness under s. 95, noting that any contrary finding would directly contradict s. 95(2)(f): at para. 150.
- [344] The same argument Mr. Budd makes here was rejected in *Moore*, where the Court considered both *A.J.E.* and *Charan*, but declined to follow them because they did not consider the express wording of s. 95(2)(f):
- [107] A significant post-separation increase in an asset's value due to market forces coupled with a lack of contribution by one spouse has been referred to in judgments of this Court as a basis for a finding of significant unfairness: see *A.J.E. v. T.B.W.*, 2017 BCSC 1657 at paras. 144-147; *Charan v. Charan*, 2018 BCSC 1537 at paras. 163-176. In those cases, the unfairness was addressed by setting the separation date as the date for valuing the asset instead of the presumptive trial date.
- [108] The wording of s. 95(2)(f) of the FLA does not appear to have been considered in those cases. It expressly provides that a significant post-separation increase or decrease in value "beyond market trends" is a factor that may be considered in determining whether an equal division of family property would be significantly unfair. This indicates that a post-separation increase or decrease in value due to market trends would not, itself, support a finding of significant unfairness. As observed by Justice Young in *K.A.L. v. K.J.L.*, 2017 BCSC 651 at para. 286: "there should be compelling evidence to depart from the standard valuation date as the date of trial thereby disentiing one property owner [to] the benefit of the increase in value of property which is brought about by market forces and not as a result of direct effort of the other party". There is no such compelling evidence here.

[Emphasis in original.]

- [345] I accept that Mr. Budd has borne the financial burden of the carrying costs associated with his real property and other excluded assets, but those are his excluded assets to retain and maintain, and there is no evidence that payment of those expenses caused an increase in the value of the family property beyond market forces. Mr. Budd retired from his investment banking career before the relationship started and did not actively manage his own investments or otherwise contribute to any increase in their value in the sense contemplated in s. 95(2)(f). Further, and as noted in *Lan v. Buchanan*, 2024 BCSC 302, the FLA discourages the type of forensic analysis of post-separation spending that Mr. Budd's position invites.
- [346] The present circumstances are not like those in *Popein*, where the party seeking unequal division had made post-separation mortgage payments that were found to have caused an increase in the value of the family home beyond market trends: para. 155. Nor are they akin to *Moore*, where the party seeking unequal division had made post-separation interest payments over a period of ten years that were found to have prevented a significant increase in debt: paras. 97 and 100.
- [347] There is no compelling evidence that the increase in the value of Mr. Budd's excluded property (which is the only family property in issue) was caused by anything other than market forces, including market-driven increases in real property values and fluctuations in currency exchange rates which impacted the value of his USD investments. I am not, therefore, persuaded that this factor gives rise to significant unfairness.

Section 95(2)(i): Other factors--relative contribution

- [348] Mr. Budd submits that equal division would be significantly unfair in light of the parties' relative contributions. Mr. Budd acknowledges that the principle of relative contribution found in s. 65(1) of the former Family Relations Act, R.S.B.C. 1996, c. 128, was not carried forward into s. 95(2) of the FLA, but says that the court nonetheless retains the discretion to consider unequal contributions under s. 95(1)(i).
- [349] Contribution is not a requirement for an equal division of family property under s. 81 of the FLA: *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 84. Something more than differing financial contributions is required to establish significant unfairness: *Baillargeon* at para. 140; *Davie* at paras. 161-164. As the Court explained in *Slavenova v. Ranguelov*, 2015 BCSC 79:
- [60] The "significant unfairness" contemplated by s. 95 [of the FLA] requires much more than differing financial contributions in a relationship. Exactly equal contribution is more likely exceptional than commonplace. The new regime under the FLA recognizes that partners will come to a relationship in differing circumstances and accounts for those in the concepts of "family property" and "excluded property". The starting point in the division of property analysis already applies significant exclusions.

- [350] While I accept that the Court retains the discretion to consider the parties' relative contributions under s. 95(2)(i), the circumstances in which this factor can be considered are intended to be "much constrained": *Banh* at para. 33, citing *Jaszczevska* at para. 44. As the Court of Appeal explained in *Banh*:
- [33] In *Jaszczevska v. Kostanski*, 2016 BCCA 286 at paras. 43-44, Justice Harris noted that the principle of relative contribution found in s. 65(1)(f) of the former Family Relations Act, R.S.B.C. 1996, c. 128 [FRA], is not included in s. 95(2) of the FLA. Instead, s. 95(2) refers only to contributions to the career or career potential of the other spouse (s. 95(2)(c)) and to contributions that caused a significant post-separation increase in the value of family property beyond market trends (s. 95(2)(f)). He concluded that allowing relative contribution to become a regular consideration under s. 95(2) would, contrary to the intention of the legislation, "likely create uncertainty and complexity." That said, Harris J.A. concluded that some discretion remained under s. 95(2)(i) to consider unequal contributions, although the circumstances in which the discretion could be exercised "are intended to be much constrained."
- [351] It is only the economic characteristics of a spousal relationship that can be considered under s. 95(2)(i): *Hannon v. Hopson*, 2022 BCCA 314 at para. 70, citing *Singh* at para. 138; *Lamoureux v. Hedquist*, 2023 BCSC 1539 at para. 165. Financial advantage alone, unrelated to the economic characteristics of the spousal relationship, does not justify a departure from the usual rule of equal division of family property: *Cook v. Cook*, 2021 BCCA 194 at para. 50; *Healey* at paras. 76, 82.
- [352] The circumstances in which unequal contributions may be a relevant factor in assessing the fairness of equal division are therefore constrained. Cases in which unequal contribution to family expenses and burdens were found to make it significantly unfair to divide family property equally involve "marked, prolonged, and intentional or unexplained disparities in contributions to family burdens": *Khan v. Gilbert*, 2019 BCCA 80 at para. 32. Any suggestion that unequal post-separation contributions should generally result in unequal division of family property is "misguided": *Jean Louis* at para. 35.
- [353] Mr. Budd says the present circumstances are akin to those in *Lamoureux*, where the court found unequal division was warranted where the respondent "brought significant assets with growth potential into a tumultuous and relatively short relationship": para. 195. However, as set out above, my jurisdiction to consider "other factors" under s. 95(2) is much circumscribed. Neither the amount of the exclusion or the quality of the relationship are permissible considerations under s. 95(2). Given the constraints imposed by s. 95(2), I am not persuaded by the reasoning in *Lamoureux* as in my view, it reflects an approach more heavily weighed towards relative contribution than the economic circumstances of the relationship: see e.g. paras. 190--194.

- [354] I am not satisfied that the disparity in Mr. Budd and Ms. Fleury's financial circumstances when considered in light of the economic characteristics of the relationship is of a sufficiently "marked, prolonged and intentional or unexplained" nature--either during the relationship or post-separation--to give rise to significant unfairness to Mr. Budd.
- [355] First, Mr. Budd and Ms. Fleury came into their relationship in significantly different financial positions. Mr. Budd is an individual of significant wealth who wanted to enjoy Ms. Fleury's companionship in the lifestyle to which he was accustomed. The economic characteristics of their relationship thus predated the relationship; they did not arise because of it. There was no expectation that Ms. Fleury would contribute financially towards maintaining the lavish lifestyle he enjoyed before, and which they enjoyed together during, the relationship. From the outset of the relationship, Mr. Budd provided Ms. Fleury with an allowance, supported her ceasing work as a massage therapist, and paid for her expenses, including their extensive travel together and Ms. Fleury's significant health, beauty, and fashion expenses.
- [356] Second, the value of Mr. Budd's pre-relationship contributions is already accounted for through his excluded property: Moore at para. 113. The post-separation expenses that Mr. Budd incurred to maintain and insure his excluded property are accounted for by using the Sanders Report to calculate the family property under s. 84(2)(g), which treats post-separation spending as a reduction in the gain on his excluded property and consequently reduces the family property available for division.
- [357] Mr. Budd also submits that Ms. Fleury did not support his career or provide the type of other non-monetary contributions often referred to in the jurisprudence. I do not find this submission compelling on the present facts. Mr. Budd was retired throughout the duration of the relationship, the parties did not have children, and domestic services were largely provided by staff. Nevertheless, I find that Ms. Fleury did provide some non-monetary contributions towards the family unit by way of her support for Mr. Budd's charity endeavours, her attempts to ensure he was eating healthy foods and taking his medications, her support of and care for Mr. Budd's health when he relapsed, her assistance with managing the California Property, and her redecoration of that property.

Conclusion on significant unfairness

- [358] Weighing the relevant factors under s. 95(2), I find that Mr. Budd has not discharged the onus of establishing that an equal division of the increase in the value of his excluded property would be significantly unfair. Although the parties' relationship was relatively short, Banh instructs that this factor alone is not sufficient to establish significant unfairness: at para. 64.

- [359] At base, Mr. Budd's position reduces to the proposition that equal division would be significantly unfair because of Ms. Fleury's lack of financial contribution relative to his substantial wealth. He claims that this significant unfairness is compounded by the corresponding gain on his excluded property which arose over the course of the parties' relatively short relationship. These submissions run contrary to the property division regime set out in the FLA and are unsupported in the jurisprudence.
- [360] The scheme set out in the FLA is not inherently unfair when it comes to a spouse's excluded property, even in cases of substantial wealth, because the other spouse is only entitled to equal division of the appreciation in value between the start of the relationship and the trial date: FLA, ss. 84(2)(g) and 87(b)(ii). The FLA's conception of excluded property, presumption of valuation at trial, and express inclusion of only the gain on excluded property as family property thus makes full account for circumstances where one spouse enters a relationship with significant assets.
- [361] There is nothing in the FLA or the jurisprudence to suggest that different considerations should apply to spouses with substantial wealth than to those without, or that departure from the strong presumptions in favour of equal division of family property valued at the trial date do not apply to wealthy spouses. Rather, the FLA's property division regime contemplates some unfairness. Thus, while Mr. Budd may perceive it to be unfair that Ms. Fleury's presumptive entitlement to an equal share in the gain on his excluded assets will afford her a "windfall" in the millions of dollars, this does not give rise to significant unfairness in the sense mandated by s. 95(2).

Section 87: Unequal division by valuation at separation instead of trial

- [362] Mr. Budd also seeks unequal division by asserting that the gain on his excluded property under s. 84(2)(g) ought to be valued at separation rather than at trial. As noted above, s. 87(b)(ii) imposes a strong presumption that family property must be based on its fair market value as of the date of trial. Because of this, the parties are presumptively entitled to share in any post-separation increases in the value of family property, independent of their respective contributions to that post-separation increase: Jean Louis at para. 34, citing Jaszczewska at para. 39.
- [363] A departure from the presumptive date for valuation of family property is effectively a reapportionment or unequal division of family property, which can only be done under s. 95 of the FLA: Banh at para. 26, citing Namdarpour at para. 59; Kumagai at para. 76. Sections 87 and 95 are thus alternate means of addressing potential unfairness that may arise from equal division of family property valued at trial and the "significant unfairness" standard applies equally under both provisions: Banh at para. 26.

- [364] The court should only exercise its discretion to depart from valuing family property at the date of trial where there is compelling evidence to justify doing so: *Banh* at para. 28. Mr. Budd must therefore establish, based on compelling evidence, that equal division of family property valued as of the date of trial would result in significant unfairness, considering the criteria set out in s. 95(2).
- [365] Unequal contribution post-separation is not an enumerated factor under s. 95(2): *Jean Louis* at para. 45. Section 87 does not invite a free-ranging consideration of what would be "fair" untethered to the substantial unfairness standard mandated by s. 95(1) and the factors set out in s. 95(2). I have dealt with the s. 95(2) factors above and concluded that Mr. Budd has not established that equal division would be significantly unfair. Mr. Budd has established any factors--other than the duration of the relationship, which is not alone sufficient--that favour an unequal division of family property. In light of *Banh*, *Namdarpour*, and *Kumagai*, that conclusion is also dispositive of the analysis under s. 87.
- [366] If I am incorrect in so concluding, I will address the multiple additional factors which Mr. Budd says make it significantly unfair to value the gain on his excluded assets at trial. In short, I am not persuaded that any of these factors give rise to significant unfairness sufficient to depart from the strong presumption set out in s. 87 of the FLA.
- [367] First, Mr. Budd says it would be significantly unfair to value the gain on his assets at trial because they were acquired "long before" the start of his relationship with Ms. Fleury. This factor is already accounted for in the FLA's excluded property regime and Mr. Budd adduced no authority suggesting that the length of time a spouse held excluded property prior to a relationship has any bearing on the valuation date.
- [368] Second, Mr. Budd says that the separation date should be used because Ms. Fleury's personal spending during the relationship reduced his asset base. The parties agree that Ms. Fleury received benefits of approximately \$750,000 over the course of the relationship. Again, Mr. Budd adduced no authority suggesting that spending by one spouse for another's benefit during the relationship creates significant unfairness warranting unequal division.
- [369] Third, Mr. Budd says that Ms. Fleury made no financial contribution during the relationship, nor did she provide any domestic services, care for children, or do anything to enhance Mr. Budd's career and his income earning ability. Mr. Budd relies on A.J.E. and asserts that Ms. Fleury's lack of contribution combined with the benefits she received during the relationship warrants valuing family property at separation. I do not find A.J.E. persuasive in the current context and decline to follow it because:
- a) The relationship in A.J.E. predated the FLA coming into force thus, the parties had no expectation that they would be deemed to have taken on the same obligations as if they had formally married: A.J.E. at para. 169;

- b) A.J.E. effected an unequal division under s. 87 without considering the express language of s. 95(2)(f) or whether the significant unfairness standard was met, perhaps because *Blair v. Johnson*, 2015 BCSC 761, does not appear to have been brought to the Court's attention;
 - c) The analysis in A.J.E. focussed in material part on the relative contributions of the parties (see e.g. paras. 172-176), contrary to the more recent jurisprudence which makes clear that the court's discretion to do so is significantly constrained; and
 - d) A.J.E. relies on *Wilson v. Fotsch*, 2010 BCCA 226, and found that that unequal division was warranted because A.J.E. "received more from [the] relationship while it was underway than she lost" (A.J.E. at para. 174). However, *Wilson* predates the FLA and is thus not reflective of the current statutory framework and strong presumptions in favour of equal division of family property valued at trial.
- [370] I also decline to follow *Charan* on this point, because it relies on A.J.E. to assert that the relative contributions of spouses can justify a valuation of property at the time of separation: *Charan* at para. 166.
- [371] Fourth, Mr. Budd says that the increase in value of his excluded property post-separation related primarily to his 2022 sale of certain oil and gas investments that he purchased many years ago. He says that the "large amount of cash" he received from the sale was not reduced by the "large amount of tax" which he subsequently had to pay, because he was able to reduce his tax bill by using capital losses from previous years. As noted above, the evidentiary record is insufficient for me to determine whether this was in fact the case, or what impact it had in terms of the gain on his excluded assets.
- [372] Finally, Mr. Budd says that the post-separation increase in the gain on excluded property was largely attributable to a post-separation increase in the value of the California Property and the effect of exchange rate fluctuations. These increases are clearly the product of market forces, namely market-based property values and currency fluctuations. I have addressed this issue above, but reiterate that only the increase in the value of family property beyond market trends is relevant in assessing whether equal division would be significantly unfair under s. 95(2)(f): *Moore* at para. 108; *Popein* at para. 150. Though he does not say so directly, Mr. Budd's argument on this point is effectively that Ms. Fleury ought not to share in the post-separation increase in property values because she did not contribute towards that appreciation. This argument has been repeatedly rejected, including by the Court of Appeal in both *Jean Louis* at para. 45 and *Kumagai* at para. 84.
- [373] In the result, to the extent that any factors beyond those in s. 95(2) are relevant in establishing significant unfairness for the purpose of s. 87, I am not persuaded that any of the above-noted factors warrant departure from the presumptive valuation of family property at trial as prescribed by s. 87 of the FLA.

Conclusion on Property Division

- [374] There is no basis to depart from the presumptive equal division of family property in s. 81 of the FLA. Ms. Fleury is thus entitled to half of \$12,011,783, namely \$6,005,892.
- [375] In so concluding, I am mindful of the Court of Appeal's comment in *Rana v. Ullah*, 2022 BCCA 192 at para. 44, that in the family law context, legal principles are intended to assist the Court in reaching an outcome that is fair and reasonable to both parties. However, this does not permit me to "apply 'abstract concepts of fairness' when dividing family assets" or substitute a concept of fairness other than the significant unfairness standard prescribed in s. 95(2): *Cook* at para. 46. As the Court of Appeal explained in *Cook*:
- [48] We ought not to find unfairness in the outcome contemplated by the legislation and that is, therefore, presumptively fair. Under the current Family Law Act regime, "[t]he starting point in the division of property analysis already applies significant exclusions": V.J.F. at para. 10, citing *Slavenova v. Rangelov*, 2015 BCSC 79 at para. 60. An unequal starting point suggests that an unequal end point is similarly contemplated by the statutory regime.
- [376] In my view, applying the strong presumptions set out in ss. 81 and 87 of the FLA in favour of equal division of family property valued at trial is reasonable and fair to both parties, given the circumstances of the parties' relationship.
- [377] However, further adjustments need to be made to account for the interim distribution of \$800,000 that Ms. Fleury received in April 2023, and the \$60,000 loan that Mr. Budd repaid on her behalf. In the latter respect, in August of 2021, Mr. Budd repaid a debt of \$60,000 that Ms. Fleury owed to K.M. on account of funds he transferred to her in 2017. The circumstances in which the loan was made are somewhat vague on the evidence. Mr. Budd says it was a loan to Ms. Fleury, of which \$50,000 was for the GTT investment and \$10,000 for a personal loan. Ms. Fleury characterizes the debt as arising from her having guaranteed a \$60,000 loan K.M. made to her brother, A.F., for a cannabis grow operation.
- [378] The initial purpose for which the advance was made is immaterial for present purposes as Ms. Fleury acknowledged in her closing submissions that Mr. Budd repaid the money to K.M. and that Ms. Fleury was in turn obligated to repay Mr. Budd. It is undisputed that she has not done so. Given the timing of the initial loan and the documentation Ms. Fleury signed, and her acknowledgement in closing that she owed the money to Mr. Budd, I am not persuaded that this was repayment of a family debt. Accordingly, in the interest of expediency and ensuring the final resolution of the disputes between the parties, I find it in the interests of justice that this debt be extinguished in the division of family property and so will account for it in the final division of family property.
- [379] Subtracting the \$800,000 interim distribution and \$60,000 loan repayment yields a net compensation payment from Mr. Budd to Ms. Fleury of \$5,145,892 (\$6,005,892 - \$860,000).

Tort Claims

- [380] Rule 3-1(5) of the Supreme Court Family Rules permits a party to bring a claim that would not, on its own, be part of a family law case if the claim is related to or connected with any relief sought in the case: see e.g. *Turcotte v. Godine*, 2022 BCCA 24 at para. 45.
- [381] While Ms. Fleury alleges that Mr. Budd committed multiple acts of family violence towards her, the current state of the law does not recognize a tort of family violence: *Ahluwalia* at paras. 102 and 142, leave to appeal to SCC granted, 41061 (16 May 2024). In the Ontario Court of Appeal's view, the existing torts of assault, battery, and intentional infliction of mental distress are sufficiently flexible to address the reality that family violence often involves patterns of recurring behaviour and may take different forms than violence that occurs outside of familial relationships: *Ahluwalia* at paras. 91-92.
- [382] Ms. Fleury therefore advanced causes of action for assault (including sexual assault), battery, intentional infliction of emotional distress, invasion of privacy contrary to the Privacy Act, R.S.B.C. 1996, c. 373, and intrusion upon seclusion. However, she abandoned all claims other than those in assault, battery, and intentional infliction of mental distress.
- [383] Although the torts alleged by Ms. Fleury occurred in the family context, the elements that must be established on a balance of probabilities remain unchanged: see e.g., *S.W. v. I.E.W.*, 2023 BCSC 1653 [I.E.W.] at paras. 57-59. That said, the Court must remain cognizant of the context within which family violence occurs and resist assessing a claimant's credibility against stereotypical notions of what a victim of family violence should have done in similar circumstances: *T.M. v. C.V.M.*, 2022 BCSC 1783 at paras. 111-114; *Petrie v. Lindsay*, 2019 BCSC 371 at para. 72; *K.M.N. v. S.Z.M.*, 2024 BCCA 70 at paras. 109-127. As the Supreme Court of Canada recognized in *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 144, family violence allegations are often hard to prove given that they frequently occur behind closed doors and may therefore lack corroborating evidence.

Assault and Battery

- [384] Assault and battery are intentional torts. Battery involves the intentional infliction of unlawful force on another person. The court must conclude that the defendant intended to, and did in fact, make physical contact and that the contact was harmful or offensive: *R.T. v. Lowe*, 2021 BCSC 590 at para. 48, as cited in *I.E.W.* at para. 57; see also *Ahluwalia* at para. 62, citing *Non-Marine Underwriters, Lloyd's of London v. Scalera*, 2000 SCC 24 at para. 16. Assault is the intentional creation of the apprehension of imminent harmful or offensive contact, even if contact never actually occurs: *I.E.W.* at para. 57, citing *R.T.* at para. 47.
- [385] Ms. Fleury alleges two instances of which she says constitute assault or battery:
- a) a September 6, 2020, incident in the kitchen of the Main House where she says that Mr. Budd pushed her to the ground; and

- b) a November 28, 2020, incident at the California Property when she says Mr. Budd pushed her onto the bed and grabbed her phone.
- [386] Mr. Budd acknowledges that he had "tussles" with Ms. Fleury on these dates, but denies that either incident constituted assault or battery. Applying the test as set out above, I am not persuaded that either incident amounts to assault or battery because Ms. Fleury has not established that Mr. Budd had the necessary intent, or in any event, that the physical contact that occurred was harmful or offensive.
- [387] Dealing first with the November 28, 2020, incident, I do not accept Ms. Fleury's account of what transpired. Her evidence of what happened on that day more generally was rife with inconsistencies, particularly regarding the phone calls she made before and after the alleged battery and who she spoke with. There were also inconsistencies between the statements she made to police about what allegedly transpired before they arrived and her evidence at trial.
- [388] I prefer Mr. Budd's evidence about this incident to Ms. Fleury's and find that, in the course of an argument, he attempted to grab Ms. Fleury's phone, she put it behind her back, and, when he reached for it, he hit her arm in the process. He did not push her onto the bed. I am not satisfied that the contact was intentional, harmful, or offensive. On the latter points, the police report--which the parties agree is admissible for the truth of the police officer's observations and statements made by the parties which constitute admissions against interest--notes that Ms. Fleury denied being injured or wanting medical attention and told police there were no marks on her body. Ms. Fleury confirmed that evidence at trial.
- [389] I also prefer Mr. Budd's account of the September 6, 2020, incident to Ms. Fleury's. Ms. Fleury's evidence on this point was not credible or consistent with the preponderance of the probabilities. I find that the parties were having an argument in the kitchen of the Main House at the Fuller Property when Mr. Budd saw Ms. Fleury touch her phone, which was sitting on the counter. He suspected--correctly, as it turned out--that she was recording him. Both parties reached to grab the phone. Ms. Fleury says she got to it first and Mr. Budd tried to take it out of her hand; Mr. Budd says the opposite. Suffice it to say, both parties were trying to take the phone from the other. Ms. Fleury lost her grip and fell to the floor, spilling juice she was holding in her other hand. I find Ms. Fleury fell when she lost her grip on the phone, not because Mr. Budd intentionally pushed or threw her to the floor.
- [390] This version of events is generally consistent with the audio recordings. In response to Ms. Fleury asserting that he "pushed" and "threw" her to the ground, Mr. Budd repeatedly and expressly denied doing so, but acknowledged that the parties were physical with each other in grabbing the phone and expressed regret about that. Specifically, Mr. Budd says "I regret being physical and, yes, I'm sorry the juice spilt, I am. And I am sorry that you hit the ground when I grabbed the phone". Considered contextually, I find the reference to Mr. Budd being physical in the audio recording was made in relation to his attempt to grab and

hold on to her phone, not an admission that he pushed her or threw anything at her.

- [391] I do not accept that Mr. Budd pushed or threw Ms. Fleury to the floor on September 6, 2020. Her assertion that he "tossed a glass and spoon" at her is also unsubstantiated in the evidence. Accordingly, I find that Mr. Budd's physical contact with Ms. Fleury on September 6, 2020, was not intentional in that Mr. Budd did not intend to, nor did he in fact, push Ms. Fleury. Her fall to the floor was an unintended consequence of their mutual attempts to grab and hold onto her phone and the resulting struggle.
- [392] I am also not persuaded that any physical contact that did occur was harmful or offensive. This is consistent with the relevant portions of the resulting Kelowna RCMP police report, which noted that there were "No injuries observed" and "No signs of a struggle". These portions of the police report are admissible for their truth as observations of the attending officer.
- [393] In the result, I conclude that Ms. Fleury has not met her onus of establishing on a balance of probabilities that either of the September 6, 2020, or November 28, 2020, incidents constituted assault or battery.

Intentional infliction of mental suffering

- [394] Ms. Fleury alleges intentional infliction of mental suffering ("IIMS") arising from: (a) verbal abuse by Mr. Budd as reflected in the audio recordings; and (b) being coerced into engaging in sexual activities with third parties. She says that Mr. Budd's conduct in this respect caused her cocaine addiction and other mental injuries.
- [395] The elements of the tort of IIMS are: (a) conduct that is flagrant and outrageous; (b) calculated to produce harm; and (c) resulting in a visible and provable illness: *Young v. Borzoni et al*, 2007 BCCA 16 at paras. 24 and 35-39.
- [396] For the reasons set out above, I reject Ms. Fleury's assertion that her participation in the group sexual activities with Mr. Budd and others was coerced. I found that she was a willing participant when she engaged in such conduct, and that she was not forced to participate when she was not willing. I will therefore focus my analysis of her IIMS claim on the alleged verbal abuse.
- [397] The audio recordings that are particularly relevant to the allegation of IIMS span from April 2020 through September 2021 and comprise angry outbursts by Mr. Budd directed at Ms. Fleury. Mr. Budd can be heard yelling, swearing, berating, and sometimes threatening Ms. Fleury about different matters including, by way of example: his dissatisfaction with a home haircut Ms. Fleury arranged for him during COVID, complaints that she was too noisy when working out with her trainer at the Fuller Property, her lack of friends and ongoing relationship with her mother, and his dissatisfaction with certain sexual aspects of their relationship. The recordings also contain instances where Mr. Budd threatens to cancel the credit cards that he gave Ms. Fleury and to have her thrown out of a hotel room.

- [398] Marked features of the relevant recordings include the aggressive and raised tone of Mr. Budd's voice and the frequency with which Mr. Budd uses derogatory and demeaning language towards Ms. Fleury. Mr. Budd admits that he loses his temper, and that this was especially the case during the COVID-19 pandemic. He testified that that he is a very intense person who often speaks quickly and in a raised voice. That description is consistent with his demeanor when giving evidence at trial. I have no hesitation in concluding, based on Mr. Budd's conduct as demonstrated in the audio recordings, that he was verbally abusive towards Ms. Fleury and that this abuse occurred intermittently from April 2020 through to August 2021.
- [399] However, Ms. Fleury did not address how this verbal abuse meets the first or second constituent elements for a claim in IIMS--that is, conduct that is flagrant and outrageous and calculated to produce harm. The onus lies on Ms. Fleury in this respect. The authorities she adduced involved situations of combined physical, sexual, and verbal abuse, but she did not pursue the allegation that Mr. Budd sexually assaulted her by coercing her into sexual activity with third parties.
- [400] However, assuming for present purposes that Mr. Budd's verbal abuse of Ms. Fleury satisfies the first two branches of the test for IIMS, I nonetheless find that Ms. Fleury's claim fails because she has not proven that the verbal abuse she endured caused a visible and provable illness.
- [401] In so concluding, I am cognizant that mental injury is not required to be proven in the form of a clinically diagnosed, recognizable psychiatric illness: *Saadati v. Moorhead*, 2017 SCC 28 at para. 36. In *Saadati*, the Court rejected the requirement of an expert diagnosis of a recognized psychiatric illness to establish compensable mental injury: para. 2. The court also indicated that the focus should be on the symptoms and the level of harm that the claimant's particular symptoms represent, not whether a formal diagnosis of mental injury was made: *Saadati* at para. 31. Rather, plaintiffs must prove on a balance of probabilities that the alleged mental injury is "serious and prolonged, and rise[s] above the ordinary annoyances, anxieties and fears" that come with living in civil society": *Saadati* at para. 37. While *Saadati* was in the context of mental injury in negligence, its guidance is equally applicable to mental injury in IIMS: *Ahluwalia* at paras. 114-115.
- [402] In her closing submissions, Ms. Fleury narrowed the extent of her alleged injuries, asserting that Mr. Budd's tortious conduct caused:
- a) drug addiction that necessitated attendance at an in-patient rehabilitation facility; and
 - b) mental injury, including depressed mood, decreased appetite, low motivation, isolation, fatigue, low self-esteem, anxiety, and PTSD.
- [403] Ms. Fleury did not adduce expert medical evidence to establish that she experienced any of the above-noted psychological symptoms, that she was diagnosed with any mental injury, or more importantly--particularly in respect of the alleged drug addiction--that they were

caused by Mr. Budd's alleged tortious conduct. Rather, relying on Saadati, Ms. Fleury asserts that the necessary findings on causation and injury can be made based on her own evidence, her family and friends' observations, and the limited medical records that were adduced in evidence.

(a) Drug Addiction

[404] It is uncontested that by August 2021, Ms. Fleury was using cocaine daily and that she attended a month-long in-patient drug rehabilitation program in October 2021. I accept that as of summer 2021, Ms. Fleury was addicted to cocaine and required in-patient rehabilitation treatment to address her addiction. However, I am not persuaded that her drug addiction was caused by Mr. Budd.

[405] The preponderance of the evidence establishes that Ms. Fleury engaged in drug use prior to her relationship with Mr. Budd, and that her escalating drug use and transition to crack cocaine during the relationship was not forced on her by Mr. Budd. To the contrary, the parties frequently and voluntarily engaged in drug use together, and Ms. Fleury also used with friends and neighbours, including S.W. and A.D.

[406] The evidence also does not establish a causal link between Mr. Budd's verbal abuse and Ms. Fleury's cocaine addiction. Ms. Fleury concedes that there is no precedent in the case law for a finding of drug addiction caused by conduct amounting to IIMS absent expert evidence on causation. Her submissions also did not address with any specificity the evidence that establishes causation in the present case.

(b) Mental Injury

[407] Ms. Fleury testified that she suffered depressed mood, decreased appetite, low motivation, isolation, fatigue, low self-esteem, anxiety, and PTSD as a result of Mr. Budd's abuse. Her evidence is that she had episodes of self-reported low mood or depression during the relationship and that post-separation, she slept on the couch for months, was not brushing her teeth or showering, considered herself to be depressed, and did not work for the rest of 2021 or in 2022.

[408] Given my significant concerns about Ms. Fleury's credibility and the resulting negative impact this has on the weight I can give to her evidence, I am not prepared to rely on her uncorroborated, self-reported evidence to establish the nature or extent of the alleged psychological symptoms she claims to have suffered.

[409] Ms. Fleury's clinical records are also of limited assistance. They are not admissible for the truth of the statements made by Ms. Fleury, for the truth of any diagnoses, or for the truth of any opinions contained therein. Those records are not therefore admissible to prove that Ms. Fleury was in fact experiencing symptoms of the nature or duration that she reported, nor can they be used to corroborate her evidence on those points.

- [410] That said, based on the fact of Ms. Fleury having sought counselling during and after the relationship, and the observations of her family and friends, I find on balance that she experienced some psychological symptoms from time to time during and after her relationship with Mr. Budd. However, the evidence does not establish the degree of those symptoms or to what extent, if any, they were sequela of her drug addiction, Mr. Budd's conduct towards her, other events in her life, other pre-existing medical conditions, or a combination of any or all of these factors.
- [411] I am thus not persuaded that Mr. Budd's conduct caused Ms. Fleury to experience the type of serious and prolonged mental injury that rises above the ordinary annoyances, anxieties, and fears that come with living in civil society required to establish visible and provable illness. As the Court noted in Saadati, "mental injury is not proven by the existence of mere psychological upset" (emphasis in original), claimants must show "much more": para. 37. The evidence does not establish that Ms. Fleury's self-reported symptoms amounted to more than mental upset.
- [412] Moreover, Saadati expressly recognizes that while expert evidence is not required for a finding of mental injury, it remains helpful and where a claimant chooses not to adduce relevant expert evidence to assist the trier of fact, they run a risk of being found to have fallen short. The lack of expert diagnosis is not on its own dispositive, but remains a factor that the trier of fact can weigh against evidence supporting the existence of a mental injury: Saadati at para. 38. This is precisely the type of case where expert evidence would have been helpful to Ms. Fleury in meeting her burden of proof.
- [413] In the result, in the absence of any expert medical evidence and given my significant concerns with Ms. Fleury's credibility, which also negatively impact the weight that can be given to her clinical records, I find that Ms. Fleury has not met her onus of proving on a balance of probabilities that she suffered a visible and provable illness as a result of Mr. Budd's verbal abuse. Her claim in IIMS is therefore dismissed.

Conclusion

- [414] My conclusions on the key issues as they relate to spousal status and property division are summarized as follows:
- a) The parties were in a marriage-like relationship from February 2019 to August 30, 2021, and were thus spouses under s. 3 of the FLA;
 - b) The family property to be divided consists of the gain on Mr. Budd's excluded property under s. 84(2)(g) of the FLA;
 - c) The value of the gain on Mr. Budd's excluded property, assessed as at the trial date in accordance with s. 87 of the FLA, is \$12,011,783;

- d) It would not be significantly unfair to value the family property as at the trial date and to divide it equally in accordance with ss. 81 and 87 of the FLA; accordingly,
- e) Ms. Fleury is entitled to \$5,145,892 on account of equal division of family property consisting of 50% of the gain on Mr. Budd's excluded property, net of the interim distribution and loan repayment.

[415] Ms. Fleury's tort claims are dismissed.

[416] The parties did not address costs. In my preliminary view, the parties have achieved divided success. Ms. Fleury was successful in establishing that the parties were spouses under the FLA and her corresponding entitlement to equal division of family property. Mr. Budd was successful in establishing his position regarding the appropriate calculation of the gain on his excluded property and in having Ms. Fleury's tort claims dismissed. This suggests that the appropriate order as to costs is likely that the parties each bear their own costs. However, if there are matters relating to costs that I am unaware of or if the parties wish to make further submissions on costs, they are at liberty to request a judicial management conference before me to discuss scheduling of a costs hearing.

"Hughes J."

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Prepared on 28 October 2026 · Esheria